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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 1138.

W. FLEET STEELE TO THE USE OF THE CORN EXCHANGE NATIONAL BANK OF PHILADELPHIA, APPELLANT,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

FILED OCTOBER 20, 1884.

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INDEX.

	Original.	Print.
Petition filed April 30, 1880	1	1
Traverse filed October 6, 1880	9	6
Pleas of set-off and cross-demand filed December 6, 1882, by leave of court, as substitute for former plea of counter-claim withdrawn	10	6
Replication of claimant to pleas filed December 6, 1882, filed December 12, 1882, with accompanying stipulation	11	7
Stipulation as to special pleas, &c	12	7
Findings of fact and conclusion of law	14	8
Opinion of the court	21	16
Final judgment of the court	26	21
Application for and allowance of an appeal	27	21
Certificate	28	22

I.—*Petition.*—*Filed April* 30, 1880.

In the Court of Claims.

W. FLEET STEELE, TO THE USE OF THE CORN Exchange National Bank of Philadelphia,
vs.
THE UNITED STATES. } No. 12318.

The petition of William Fleet Steele, of the city of Philadelphia, State of Pennsylvania, respectfully shows:

That on or about the sixth day of April, 1875, he addressed a letter to Isaiah Hanscom, then chief of the Bureau of Construction and Repair of the Navy Department, proposing to furnish all the materials and labor for the plumbing of the United States steamer Quinnebaug for the sum of $14,500, and to take in whole or part payment for such materials and labor brass and lead arising from the breaking up of old vessels belonging to the United States, and which could be reworked for the purpose; and your petitioner files herewith a certified copy of said letter, marked Exhibit C. E. N. B., No. 1, and prays the same may be taken as part hereof. Thereupon, on the 30th day of July, 1875, the said chief of said Bureau, acting for and in behalf of the Navy Department, and of the Government of the United States, addressed a letter to your petitioner
2 stating that the Bureau considered his proposal of April 5th too high, and proposing and agreeing to pay him $12,000 for the performance of all the necessary plumbing work on said steamer, payment to be made partly in old plumbing materials, accumulated from the breaking up of certain old vessels of the United States, and the balance to be made in two equal payments in money on the certificate of the naval constructor superintending the work, that the work had been satisfactorily completed according to specifications to be furnished; and your petitioner files herewith a certified copy of said letter, marked Exhibit C. E. N. B., No. 2, and prays the same may be taken as part hereof.

On the 2d day of August, 1875, your petitioner addressed a letter to the said chief of said Bureau accepting said proposition of July 30, 1875; and your petitioner files herewith a certified copy of said letter, marked Exhibit C. E. N. B., No. 3, and prays the same may be taken as part hereof.

Your petitioner further shows that he performed the labor and furnished the materials for the plumbing of said steamer Quinnebaug, pursuant to the contract thus entered into between him and the Navy Department.

On the 27th day of September, 1876, Captain C. H. Wells, commandant of the navy-yard at League Island, Pennsylvania, appointed the naval constructor superintending the construction of said steamer and other officers as a board to examine the plumbing of said steamer, and report (inter alia) the sum of money due to your petitioner under his said agreement of July 30, 1875; and on the 2d day of October, 1876, said board made their report in writing, stating that on that day there was due to your petitioner the sum of $3,400; and your petitioner files herewith a copy of said report, marked Exhibit C. E. N. B., No. 4, and prays the same may be taken as part hereof.

3 Thereupon your petitioner presented his claim and account in writing against the Navy Department for said sum of $3,400, the amount found to be due, and on the 5th day of October, 1876, said naval constructor certified, in writing, on the face of said account, that it was correct, and on the same day the said commandant, acting for and in behalf of the United States, on the face thereof, in writing, approved the same. And your petitioner files herewith a copy of said claim and account, marked Exhibit C. E. N. B., No. 5, and prays the same may be taken as part hereof.

After said claim had been certified and approved as aforesaid, to wit, on the first day of December, 1876, at the city of Philadelphia, your petitioner sold, transferred, and assigned the same to the said Corn Exchange National Bank of Philadelphia for the sum of $2,720, and the said bank, on the same day, paid the purchase-money therefor without knowledge or notice of any alleged objection or infirmity to or in said claim, and upon the faith of the accredited officers of the Government whose name appeared thereon. And your petitioner avers that no other assignment or transfer of said claim, or any part thereof or interest therein has been made; that no part thereof has been paid, although the same was duly presented to the Navy Department for payment; and that your petitioner is justly entitled to the said amount of $3,400 from the United States after allowing all just credits and set-offs.

Your petitioner further shows that he was, at the time said contract was entered into, and still is a citizen of the United States, and that he has at all times borne true allegiance to the Government of the United States; and he has not, nor has the said bank or its officers, in any way, voluntarily aided, abetted, or given encouragement to rebellion against the said Government, and your petitioner believes the facts as stated in this petition to be true.

4 Your petitioner therefore prays judgment against the United States for the sum of $3,400, with interest and costs of suit.

WILLIAM FLEET STEELE.
W. D. DAVIDGE,
R. B. WASHINGTON,
Attorneys for Claimant.

CITY AND COUNTY OF PHILADELPHIA,
State of Pennsylvania, ss:

Before me, Samuel Bell, a commissioner of the circuit court of the United States in and for the eastern district of Pennsylvania, personally appeared, this twentieth day of March, 1880, W. Fleet Steele, whose name is subscribed to the foregoing petition, being personally well known to me, and made oath that the facts stated in the foregoing petition are true.

In witness whereof I have hereunto set my hand and affixed my official seal, at Philadelphia, this 20th day of March, 1880.

[SEAL.] SAMUEL BELL,
U. S. Com'r.

5 *Exhibits to petition.*

U. S. NAVY DEPARTMENT,
Washington, D. C., January 30, 1879.

I hereby certify that the annexed are correct copies of papers on file in the Bureau of Construction and Repair, Navy Department, relating to

agreement of W. Fleet Steele for plumbing work on the U. S. S. Quinnebaug, dated April 6, July 30, and August 2, 1875, and October 2, 1876.

JNO. W. HOGG,
Chief Clerk.

Be it known that John W. Hogg, whose name is signed to the above certificate, is now, and was at the time of so signing, chief clerk in the Navy Department, and that full faith and credit are due to all his official attestations as such.

In testimony whereof I have hereunto subscribed my name and caused the seal of the Navy Department of the United States to be affixed, at the city of Washington, this thirtieth day of January, in the year of our Lord one thousand eight hundred and seventy-nine, and of the Independence of the United States the one hundred and third.

[OFFICIAL SEAL.] R. W. THOMPSON,
Secretary of the Navy.

EXHIBIT C. E. N. B., No. 1.

(Copy.)

PHILADELPHIA, *April 6th*, 1875.

SIR: I will furnish all material and labor for the plumbing of the U. S. S. Quinnebaug, according to the requirements of the service, and to the satisfaction of the inspecting officer, for the sum of fourteen thousand five hundred dollars, and will take, in whole or part payment, any old brass or lead arising from old vessels that can reworked for that purpose.

Respectfully yours,
(Signed) W. FLEET STEELE,
Ship Plumber, No. 3 South St.

I. HANSCOM,
Chief of Bureau Construction and Repair,
Navy Department, Washington, D. C.

6 EXHIBIT C. E. N. B., No. 2.

(Copy.)

NAVY DEPARTMENT,
BUREAU OF CONSTRUCTION AND REPAIR,
July 30th, 1875.

SIR: Referring to your offer of the 6th inst. (April), to do all the plumbing work on the Quinnebaug for the sum of $14,000, the Bureau considers the sum named too high, and proposes to you that you shall do all the necessary plumbing work, that is to say, furnish all necessary ship's water-closets, urinals with tanks, cocks, valves, waste pipes, and other lead pipes connecting the same; also, the lining of the head and manger, with head pumps, all the necessary dills also lining the bowsprit bed, hawse pipes, galley bed, ship scuppers, air ports, rudder case, chocks, magazines, shell rooms, passages, light boxes, boat ammunition room, sail room, bread room,

pantry, and furnishing sea cocks, channel pumps, deck pumps, bilge pumps, fresh water pumps, copper strainers, sounding pipes, sills, &c.

And in consideration of your doing the work as above set forth, the Bureau agrees to pay the sum of twelve thousand dollars ($12,000). The old materials the Government will furnish to you to be reworked, which have accumulated from the breaking up of the light-draught monitors Koka and Minnetoka, at Wilmington, Del., and the Algoma and Otsego, at the works of Cramp & Sons, Philadelphia, will go towards the materials used in this work. The balance to be paid in two equal payments, in money, on the certificate of the naval constructor superintending the work, that the work is satisfactorily completed according to the specifications, which will be furnished.

Please notify the Bureau in writing of your acceptance of this proposition.

Respectfully, &c.,
(Signed) I. HANSCOM,
Chief of Bureau.

W. FLEET STEELE, Esq.,
Philadelphia, Pa.

7 EXHIBIT C. E. N. B., No. 3.

(Copy.)

PHILADELPHIA, *August 2d*, 1875.

SIR: I accept the proposition and terms of your letter of July 30th, 1875, and will proceed with the work to completion as rapidly as the vessel may be prepared for the reception of the same, for the sum of twelve thousand dollars, "as named by you," utilizing and reworking the old material delivered to me for that purpose.

Respectfully, &c.,
(Signed) W. FLEET STEELE,
Ship Plumber.

I. HANSCOM, U. S. N.,
Chief Bureau of Construction,
Navy Department, Washington, D. C.

EXHIBIT C. E. N. B., No. 4.

(Copy.)

NAVAL CONSTRUCTOR'S OFFICE, U. S. NAVY YARD,
League Island, Pa., October 2d, 1876.

SIR: In obedience to your order of the 29th ult., appointing us a board to examine the plumbing "of the U. S. S. Quinnebaug," now at *at* the yard of Messrs. Neafe & Levy, Philadelphia, and report what proportion of said work has been done up to date by W. Fleet Steele, under his agreement of July 30th, 1875, also reporting the sum which, in your (our) opinion, is now due him:"

We have to report that, upon a careful examination and estimate of the work referred to, we find that about eight-tenths ($\frac{8}{10}$) has been completed

in accordance with the agreement, which entitles him to receive in old plumbing materials and money the sum of nine thousand six hundred dollars ($9,600) in all.

Mr. Steele has received approved bill, dated Nov. 8th, 1875, for $3,900, and old materials valued at $2,100.....	$6,000 00
And has since received old material valued at.....	200 00
Total payment.....	$6,200 00

8 We are of the opinion that the sum due him to date is three thousand four hundred dollars ($3,400).

We are, sir, very respectfully, your obedient servants,

(Signed) PHILIP HICHBOURN,
Naval Constructor, U. S. N.

(Signed) JOHN B. HOOVER,
Ass't Naval Constructor, U. S. N.

(Signed) JOHN B. COFFIN,
Foreman Plumber.

Captain C. H. WELLS, U. S. N.,
Com'd't Navy Yard, League Island, Pa.

549] (Copy.)

EXHIBIT C. E. N. B., No. 5.

"(V. 1.) *Labor.*

"*The U. S. Navy Department to W. Fleet Steele, Dr.*

"[Appropriation, construction, and repair, Bureau of Construction and Repair.]

"Balance due for plumbing work on U. S. S. Quinnebaug, per agreement dated July 30, 1875, as per report of board, Oct. 2, 1876..... $3,400 00

"Entered.

"(Signed) "WM. J. MANNING,
"*Clerk to Comm'd't.*

"$3,400.00.

"Having fully examined the above charges, I certify the same is correct.

"PHILIP HICHBORN, *N. C.*

"NAVAL CONSTRUCTOR'S OFFICE,
"U. S. NAVY YARD, LEAGUE ISLAND, *Oct. 5th*, 1876.

(On margin:) "In triplicate.

"NAVY YARD, LEAGUE ISLAND, *Oct. 5th*, 1876.

"This bill is approved for the sum of thirty-four hundred dollars —— cents.

"(Signed) "C. H. WELLS,
"$3,400.00. "*Captain, Commandant.*

"PAYMASTER'S OFFICE, ———, 187—.

"Received of ———, paymaster U. S. N., ——— dollars and ——— cents, in full of the above bill.

"W. FLEET STEELE."

9 II.—*Traverse. Filed October* 6, 1880.

And now comes the Attorney-General, on behalf of the United States, and, answering the petition of the claimant herein, denies each and every allegation therein contained and asks judgment that the petition be dismissed.

And as to so much of the said petition as avers that the said claimant has at all times borne true faith and allegiance to the Government of the United States and has not in any way voluntarily aided, abetted, or given encouragement to rebellion against the said Government, the Attorney-General, in pursuance of the statute in such cases provided, denies the said allegations and asks judgment accordingly.

THOMAS SIMONS,
Assistant Attorney-General.

10 III.—*Pleas of set-off and cross-demand, filed December* 6, 1882, *by leave of court, as substitute for former plea of counter-claim withdrawn.*

The Assistant Attorney-General, on behalf of the United States, for a further plea says that the claimant at the time of filing his petition was, and still is, indebted to the defendants in the just sum of $20,000 for so much money by the said claimant had and received to and for the use of the defendants.

And for a further plea the Assistant Attorney-General says that the claimant was, and still is, indebted to the defendants in the further sum of $20,000; for that whereas the defendants heretofore, to wit, on the 1st day of January, 1875, were lawfully possessed, as of their own property, of certain goods and chattels, to wit, 10,000 pounds of old copper, 50,000 pounds of old brass, 10,000 pounds of old lead, and 50,000 pounds of zinc dross, and 10,000 pounds of old naval materials of great value, to wit, of the value of $20,000; and being so possessed the said defendants afterwards, to wit, on the day and year first above mentioned, casually lost the said goods and chattels out of his possession, and the same afterwards, on the day and year aforesaid, came to the possession of the claimant by finding. Yet the said claimant, well knowing the said goods and chattels to be the property of the defendants, hath not as yet delivered the said goods and chattels or any or either of them, or any part thereof, to the said defendants, although often requested so to do; and afterwards, to wit, on the day and year aforesaid, he converted and disposed of the said goods and chattels to his own use, to the damage of the said defendants of $20,000.

And for a further plea the Assistant Attorney-General says that, in accordance with the letters set forth in the exhibits to claimant's petition, the officers of the Government delivered to claimant a large amount of old material to be utilized and reworked by him for the plumbing work of the Quinnebaug. A small portion of the material thus delivered he reworked in accordance with said letters, but the greater portion thereof, in violation of the terms of said letters, he sold to third parties, realizing therefrom the sum of $20,000. Wherefore he became indebted to the United States in the sum of $20,000.

And the Assistant Attorney-General prays judgment in favor of the United States and against said W. Fleet Steele in the sum of $60,000.

THOMAS SIMONS,
Assistant Attorney-General.

11 IV.—*Replication of claimant to pleas filed December* 6, 1882.—*Filed December* 12, 1882, *with accompanying stipulation.*

And now comes the claimant and joins issue upon the defendants' pleas filed December 6, 1882.

R. B. WASHINGTON,
Att'y for Claimant.

DECEMBER 12, 1882.

It is hereby stipulated that the claimant may file a general replication to the pleas of the defendants filed December 6, 1882, and a reply under oath is waived.

THOMAS SIMONS,
Ass't Att'y General.

DEC. 12, 1882.

12 V.—*Stipulation as to special pleas, amending the plea of set-off and cross-demand, and withdrawing special plea under section* 1086 *Revised Statutes, heretofore filed.—Filed February* 13, 1884.

It is hereby stipulated and agreed that, prior to the submission of this case, the plea of set-off and cross-demand filed by the defendants December 6, 1882 (and found on pages 87 and 88, the trial record), was amended so as to read as follows:

In the Court of Claims of the United States.

W. FLEET STEELE }
vs. } No. 12318.
THE UNITED STATES. }

Pleas of set-off and cross-demand.

The Assistant Attorney-General, on behalf of the United States, for a further plea, says that the claimant, at the time of filing his petition, was, and still is, indebted to the defendants in the just sum of $20,000, for so much money, by the said claimant, had and received to and for the use of the defendants.

13 And, for the further plea, the Assistant Attorney-General says that, in accordance with the letters set forth in the exhibits to claimant's petition, the officers of the Government delivered to claimant a large amount of old material to be utilized and reworked by him for the plumbing work of the Quinnebaug. A small portion of the material thus delivered he reworked in accordance with said letters; but the greater portion thereof, in violation of the terms of said letters, he sold to third parties, realizing therefrom the sum of twenty thousand dollars.

Wherefore he became indebted to the United States in the sum of twenty thousand dollars.

And the Assistant Attorney-General prays judgment in favor of the United States and against said W. Fleet Steele in the sum of sixty thousand dollars.

And it is further stipulated and agreed that the special plea under section 1086, Revised Statutes, filed by the defendants 6, 1882 (and found on pages 89, 90, and 91 of the trial record), was withdrawn prior to said submission.

THOMAS SIMONS,
Asst. Att'y General.
R. B. WASHINGTON,
Att'y for Claimant.

14 VI.—*Findings of fact and conclusion of law.—Filed by the court February* 18, 1884.

This case having been heard before the Court of Claims, the court upon the evidence finds the facts to be as follows:

I.

In the month of March, 1875, and thereafter in that year while the matters hereinafter set forth were occurring, the claimant was engaged in the city of Philadelphia, Pa., in the business of ship plumbing, and had a capital of about $2,500 cash; and during the same time Robert W. Steele was a naval constructor in the United States Navy, and was on duty as such in said city, but not in the navy-yard there; and Edward Hartt was a naval constructor in said Navy, and was on duty as such at the Philadelphia navy-yard; and Isaiah Hanscom was Chief of the Bureau of Construction and Repair in the Navy Department. The duty of said Robert W. Steele in Philadelphia was that of superintending the repairing or rebuilding of monitors at the different yards of Harlan & Hollingsworth, at Wilmington, Del., Cramp & Sons, in the northern part of Philadelphia, and John Roach & Sons, at Chester, Pa.

II.

In the said month of March the United States steamer Quinnebaug was on the ways in the Philadelphia navy-yard, and the firm of Neafie & Levy, ship-builders, had a contract with the Navy Department to do work on and launch her. All plumbing work on her under the water-line had to be done before she should be launched.

III.

In the latter part of said month of March, or early in April, the claimant learning that said plumbing work had to be done, went to Washington and had an interview in relation to that work with said Hanscom, in the office of the latter, when no third person was present. It does not appear what passed between the claimant and Hanscom in that interview, except that some verbal understanding was had between them for the claimant to do the needed work on the Quinnebaug; that Hanscom gave him verbal instructions to go on with the work; that the matter of using in the Quinnebaug old material taken out of other vessels was talked of; and that Hanscom spoke of the old material being of the value of $2,000; but it does not appear what particular material nor what quantity of material was referred to.

15 IV.

After said interview the claimant sent to said Hanscom the following letter:

"PHILA., *April 6th*, 1875.

"SIR: I will furnish all material and labor for the plumbing of the U. S. S. Quinnebaug according to the requirements of the service, and to the satisfaction of the inspecting officers, for the sum of fourteen thousand five hundred dollars, and will take in whole or part payment any old brass or lead arising from old vessels that can be reworked for that purpose.

"Respectfully, yours,

"W. FLEET STEELE,
"*Ship-plumber, No. 3 South St.*

"I. HANSCOM,
"*Chief of Bureau of Construction and Repair,*
Navy Dept., Washington, D. C."

No answer to this letter appears to have been returned, except that of July 30, 1875, set forth in finding IX.

V.

On the receipt of said letter of the claimant the Bureau of Construction and Repair directed Naval Constructor Hartt to draw up specifications of the plumbing work to be done on the Quinnebaug, and to obtain proposals from the ship-plumbers in the vicinity to do the work.

Such proposals were received by the Bureau, but from whom does not appear, except that contained in the aforesaid letter, which was the lowest bid for the work.

VI.

On the 15th of April, 1875, the Bureau of Construction and Repair addressed the following letter to Naval Constructor Steele:

"NAVY DEPARTMENT,
"BUREAU OF CONSTRUCTION AND REPAIR,
"*April 15th*, 1875.

"SIR: Please have all the old lead, brass, and composition arising from breaking up the monitors, including the Amphitrite, Miantonomoh, and Terror, at the establishments of Messrs. Harlan and Hollingsworth, John Roach, and Wm. Cramp & Sons, carefully weighed, boxed up, and sent to Philadelphia, and report the amount to the Bureau.

"Very respectfully, your ob'd't serv't,

"I. HANSCOM,
"*Chief of Bureau.*

"Naval Constructor R. W. STEELE, U. S. N.,
"424 *Walnut St., Philad'a, Pa.*"

Naval Constructor Steele, interpreting this letter as an authority from the Bureau to him to deliver to the claimant the old material therein referred to, proceeded to deliver to him, and the claimant received and took

into his possession, old material to the amount of 103,949 pounds, property of the defendants; of which there were delivered to him, on or before April 29, 1875, 49,399 pounds; and in the month of May ensuing, 44,775 pounds, and between May 31 and July 7, 1875, 9,775 pounds; and on the last-named date the claimant signed and delivered to Naval Constructor Steele the following two receipts:

"Received, Philadelphia, July 7th, 1875, from Naval Constructor R. W. Steele, U. S. N., old scrap material taken from broken-up monitors at Wm. Cramp & Sons' ship-building yard, amounting to 67,109 pounds.

"W. FLEET STEELE,
"*Ship-Plumber.*"

16 "Received, Philadelphia, July 7th, 1875, from Naval Constructor R. W. Steele, U. S. N., old scrap material taken from broken-up monitors at the ship-yard of the Harlan and Hollingsworth Company, Wilmington, Del., amounting to 36,840 pounds.

"W. FLEET STEELE,
"*Ship-Plumber.*"

VII.

Of the quantity of 103,949 pounds of old material received by the claimant, as stated in Finding VI, he made the following disposition of 98,748 pounds, to wit:

1. April 29, 1875, he turned over 49,399 pounds of old scrap lead, at $6\frac{1}{8}$ cents per lb. = $3,025.69, to a party, in payment for new lead purchased by him of said party.

2. May 3, 1875, he sold 18,489 pounds of old brass, at $12\frac{1}{2}$ cents per lb = $2,311.12.

3. May 18, 1875, he sold 26,286 pounds of old brass, at $12\frac{1}{2}$ cents per lb = $3,285.75.

4. June 12, 1875, he sold 1,074 pounds of scrap brass, at $12\frac{1}{2}$ cents per lb = $134.25.

5. June 12, 1875, he sold 3,500 pounds of scrap lead, at $6\frac{1}{4}$ cents per lb = $218.75.

As to the remainder of the 103,949 pounds, to wit, 5,201 pounds not turned over or sold, as aforesaid, it does not appear what became of it; but it does appear that, to get the stuff into a condition for reworking or for sale, it required considerable breaking up, handling, and sorting, as there was mixed up with the metals a quantity of gum, glass, and dirt; and it is therefore found as a fact that the said quantity of 5,201 pounds was lost in that operation.

VIII.

Naval Constructor Steele informed Hanscom of the delivery of said 103,949 pounds of old material to the claimant, by the following letter:

"PHILADELPHIA, *July 9th*, 1875.

"SIR: In obedience to your instructions, I respectfully report that there has been delivered to W. Fleet Steele, plumber, of this city, 103,949 pounds of old material from the monitors broken up at the works of the Harlan and Hollingsworth Company, of Wilmington, Del., and from Wm. Cramp

& Sons, this city, embracing brass, lead, iron, putty, glass, and gum attached, estimated to be worth $2,000, which will be deducted from his first payment for the plumbing work on the U. S. S. Quinnebaug. I beg to say that it was impossible to arrive at a satisfactory estimate of its value when appraised, as there was much alloy and dirt mixed with it, and the cost of transportation and labor in separating and preparing it for use is not known, which makes it necessary to correct the value after I obtain full information on the subject, and before his contract is completed and adjusted.

"Very respectfully, your obd't serv't,

"R. W. STEELE,
"*Naval Constructor, U. S. N.*

"I. HANSCOM, U. S. N.,
"*Bureau Construction and Repair,*
Navy Department, Washington, D. C."

IX.

On the 30th of July, 1875, said Hanscom sent to the claimant the following letter:

"NAVY DEPARTMENT,
"BUREAU OF CONSTRUCTION AND REPAIR,
"*Washington, July 30th*, 1875.

"SIR: Referring to your offer of the 6th of April, 1875, to do all the plumbing work on the Quinnebaug for the sum of $14,500, the bureau considers the sum named too high, and proposes to you that you shall
17 do all the necessary plumbing work; that is to say, furnish all necessary ship's water-closets, urinals, with tanks, cocks, valves, waste-pipes, and other lead pipes connecting the same; also the lining of the head and manger with head pumps; all the necessary dills; also lining the bowsprit-bed, hawse-pipes, galley-bed, ship's scuppers, air-ports, rudder-case, chocks, magazines, shell-rooms, passages, light-boxes, boat ammunition-room, sail-room, bread-room, pantry, and furnishing sea cocks, channel-pumps, deck-pumps, bilge-pumps, fresh-water pumps, copper strainers, sounding-pipes, sills, &c.

"And in consideration of your doing the work as above set forth, the bureau agrees to pay the sum of twelve thousand dollars ($12,000). The old materials the Government will furnish to you to be reworked, which have accumulated from the breaking up of the light-draught monitors Koka and Minnetonka at Wilmington, Del., and the Algoma and Ostego, at the works of Crump & Sons, Philad'a, will go towards the materials used in this work. The balance to be paid in two equal payments, in money, on the certificate of the naval constructor superintending the work that the work is satisfactorily completed according to the specifications which will be furnished.

"Please notify the bureau in writing of your acceptance of this proposition.

"Respectfully, &c.,

"I. HANSCOM,
"*Chief of Bureau.*

"W. FLEET STEELE, Esq.,
"*Philadelphia, Pa.*"

To this letter the claimant returned the following answer:

"PHILADELPHIA, *August 2d*, 1875.

"SIR: I accept the proposition and terms of your letter of July 30th, 1875, and will proceed with the work to completion as rapidly as the vessel may be prepared for the reception of the same, for the sum of twelve thousand dollars, 'as named by you,' utilizing and reworking the old material delivered to me for that purpose.

"Respectfully, &c.,

"W. FLEET STEELE,
"*Ship-Plumber.*

"I. HANSCOM, U. S. N.,
"*Chief Bureau of Construction,*
"*Navy Department, Washington, D. C.*"

It does not appear that the claimant did any work on the Quinnebaug until after this correspondence took place.

Before the correspondence set forth in this finding there does not appear to have been any advertisement by the Navy Department, or any officer thereof, inviting proposals for the doing of the work which was done by the claimant on the Quinnebaug, as hereinafter found.

X.

The said Hanscom, knowing from the letter of Naval Constructor Steele, of July 9, 1875, set forth in Finding VIII, that 103,949 pounds of old material had already been delivered to the claimant, addressed to Commodore George Henry Preble, commandant of the navy-yard, Philadelphia, the following letter:

"NAVY DEPARTMENT,
"BUREAU OF CONSTRUCTION AND REPAIR,
"*August 12th*, 1885.

"SIR: Enclosed please find copy of a proposition made by the Bureau to Mr. W. Fleet Steele to do the plumbing work on the Quinnebaug for the sum of $12,000, which has been duly accepted by him, and the specifications for doing the work are herewith forwarded.

"You will please direct the naval constructor superintending the work to have it proceeded with as rapidly as the other work on the Quinnebaug will allow.

"With regard to the old materials to be furnished, as mentioned in the letter enclosed, they will be supplied to the contractor at a fair valuation, and when the work, in the opinion of the superintendent, has sufficiently progressed to entitle the contractor to the first of the two money pay-
18 ments provided for in the agreement, bills for the same will be made and certified by him for the approval of the Bureau. A reservation of fifteen (15) per centum will be withheld from the amount of this bill, which reservation, as also the second payment, will not be paid until the completion and acceptance of the work.

"Respectfully, your ob'd't serv't,

"I. HANSCOM,
"*Chief of Bureau.*

"Commo. GEO. HENRY PREBLE, U. S. N.,
"*Com'd't Navy-Yard, Philadelphia.*"

XI.

In addition to the said quantity of 103,949 pounds of old material, the claimant, between August 21 and November 29, 1875, removed from the Philadelphia navy-yard, under written passes given to him, sixteen loads of plumbers' old material, of which neither the specific description, the weight, nor the value appears. The said loads were removed as follows: August 21 and September 4, one load each; November 12, four loads; November 22, eight loads, and November 29, two loads. Of the written passes seven were signed by Naval Constructor Hartt, and nine by Assistant Naval Constructor John B. Hoover, each being in one or the other of the following forms: "Pass lot of plumbers' old material from monitors, &c., per Bureau order dated August 12th, 1875;" or, "Pass one load of plumbers' old material from monitors, &c., for Fleet Steele, per Bureau order" [or "per order Bureau"] "Aug. 12th, 1875."

On account of the material removed in said sixteen loads the claimant was charged, August 21, with $50; September 4, with $50; and November 18, with $200; the first two of which sums were deducted from the money due him for work on the Quinnebaug, as shown in Finding XIII; and the last was debited to him in the final statement of his account, as shown in Finding XIV.

XII.

No survey or inspection of any of the old material referred to in Findings VI and XI appears to have been made by any officer of the United States, with a view of appraising, fixing, or ascertaining its value. Naval Constructor Hartt, who superintended the plumbing work on the Quinnebaug, was notified at the time by a messenger from Naval Constructor Steele, of the quantity of old material delivered to the claimant, and that it was scrap material from broken-up iron-clads; and Hartt subsequently told Naval Constructor Steele that he would value it upon the same basis as that of the similar old scrap sold or exchanged in removing the yard material from the old Philadelphia yard to League Island, and at that rate he supposed its value to be about $2,000. This led Naval Constructor Steele to state, in his letter of July 9 to Hanscom, set out in Finding VIII, that the 103,949 pounds were estimated to be worth $2,000; but when he so stated in that letter he was not positive whether that was to be its fixed value or not. It does not appear that Hartt at any time saw any of the 103,949 pounds of old material of which he so spoke to Naval Constructor Steele; but he assumed the value of it to be $2,000, and so set it down in an account book in his office, and so charged it against the claimant in the settlement of the account of the latter.

19 XIII.

The claimant proceeded to do plumbing work on the Quinnebaug, and on the 8th of November, 1875, the following bill was made out and approved in his favor, and he received payment thereof:

"*The U. S. Navy Department, to Fleet Steele, Dr.*

"[Appropriation, construction, and repair, Bureau of Construction and Repair.]

"To one-half ($\frac{1}{2}$) cost of plumbing of Quinnebaug, less value of old materials, $3,900.

"Bureau order Aug. 11, 1875.

"Having fully examined the above charges I certify the same are correct.

"JOHN B. HOOVER,
"*Ass't Naval Constructor, U. S. N.*

"CONSTRUCTOR'S OFFICE, U. S. NAVY YARD,
"*Philadelphia, Nov. 8, 1875.*

"Approved for the sum of three thousand nine hundred dollars.
"GEO. HENRY PREBLE,
"*Commodore, Commandant.*"

XIV.

On the 28th of September, 1876, the said Hanscom sent to Captain C. H. Wells, U. S. N., commandant of the navy-yard at League Island, the following letter:

"NAVY DEPARTMENT,
"BUREAU OF CONSTRUCTION AND REPAIR,
"*28th Sept.*, 1876.

"SIR: You will please appoint a board, consisting of the naval constructor, assistant naval constructor, and the foreman plumber of the yard under your command, who will examine the plumbing work of the U. S. S. Quinnebaug, now at the yard of Messrs. Neafie & Levy, Philadelphia, and report what proportion of said work has been done up to date by W. Fleet Steele, under his agreement of July 30, 1875; also reporting the sum which, in their opinion, is now due him, estimating on the basis of the agreed amount ($12,000), which, under agreement referred to, he was to receive for doing the entire plumbing work of that vessel.

"When the report is submitted, you will please have bills made for the amount stated by the board to be due, forwarding same to the Bureau with report.

"Respectfully, your obed't serv't,

"I. HANSCOM,
"*Chief of Bureau.*

"Captain C. H. WELLS, U. S. N.,
"*Com'd't Navy Yard, League Island.*"

In pursuance of this request, Captain Wells appointed a board, which made the following report to him:

"NAVAL CONSTRUCTOR'S OFFICE, U. S. NAVY YARD,
"*League Island, Pa., October 2d*, 1876.

"SIR: In obedience to your order of the 29th ult., appointing us a 'board' to examine the plumbing 'of the U. S. S. Quinnebaug,' now at the yard of 'Messrs. Neafie & Levy, Philadelphia, and report what proportion of said work has been done up to date by W. Fleet Steele, under his agreement of July 30th, 1875, also reporting the sum which, in your (our) opinion is now due him.'

"We have to report that, upon a careful examination and estimate of the work referred to, we find that about eight-tenths ($\frac{8}{10}$) has been com-

pleted in accordance with the agreement, which entitles him to receive, in old plumbing materials and money, the sum of nine thousand six hundred dollars ($9,600) in all.

20 "Mr. Steele has received approved bill dated Nov. 8th, 1875, for $3,900, and old materials valued at $2,100..... $6,000 00

"And has since received old material valued at..... 200 00

"Total payment..... 6,200 00

"We are of the opinion that the sum due him to date is three thousand four hundred dollars ($3,400).

"We are, sir, very respectfully, your obedient servants,

"PHILIP HICHBORN,
"*Naval Constructor, U. S. N.*
"JOHN B. HOOVER,
"*Ass't Naval Constructor, U. S. N.*
"JOHN B. COFFIN,
"*Foreman Plumber.*

"Captain C. H. WELLS, U. S. N.,
"*Com'd't Navy Yard, League Island, Pa.*"

XV.

On the 5th of October, 1876, Captain Wells made out and certified the following bill of the work done by the claimant, as reported by said Board:

"*The U. S. Navy Department, to Fleet Steele, Dr.*

"[Appropriation, construction, and repair, Bureau of Construction and Repair.]

"Balance due for plumbing work on U. S. S. Quinnebaug, per agreement dated July 30, 1875, as per report of Board, Oct. 2, 1876..... $3,400 00

"Entered—
"WM. J. MANNING,
"*Clerk to Comm'd't.*" $3,400 00

"Having fully examined the above charges, I certify the same is correct.

"PHILIP HICHBORN, *N. C.*

"NAVAL CONSTRUCTOR'S OFFICE,
"U. S. NAVY YARD, LEAGUE ISLAND,
"*October 5th*, 1876."

(On margin:) In triplicate.

"NAVY YARD, LEAGUE ISLAND,
"*October 5th*, 1876.

"This bill is approved for the sum of thirty-four hundred dollars cents.

"$3,400.

C. H. WELLS,
"*Captain, Commanding.*"

XVI.

The claimant performed eight-tenths of the work on the Quinnebaug which was to be done by him; and the value of the work he did was $9,600, on account of which he has been paid $3,900 in money. The other two-tenths of the work was done by the Government.

XVII.

At the claimant's request it is found, that on the 1st of December, 1876, the claimant sold the voucher set forth in Finding XV to the Corn Exchange National Bank of Philadelphia, for value, and without knowledge by, or notice to, said bank of any objection to or infirmity in the voucher or in the claim represented by it. The president of the bank, before making the purchase, was assured by a Mr. Russell, who was Navy Agent, or Pay Agent, or Pay Director, in Philadelphia, for the Government, that the voucher was as good a voucher as could be made by the Government; and said Russell recommended him to buy it.

21 Upon the foregoing facts the conclusion of law is, that the defendants are entitled to recover of the claimant, under the counter-claim, the sum of $3,575.56, on the ground set forth in the following opinion:

VII.—*Opinion of the court.*

DRAKE, Ch. J., delivered the opinion of the court:

There is no controversy in this case over the claim sued on, a voucher for $3,400, issued to the claimant for a balance due for plumbing work done by him on the United States Ship Quinnebaug, in 1875. The whole amount earned by him for that work was $9,600. In partial settlement with him he was charged $2,100 and $200 for certain old material which had been delivered to him by Naval Constructor Steele, at Philadelphia, under assumed authority from the Navy Department. It is with that old material that the counter-claim is connected.

The claimant is content to be charged with those items; claiming that the old material was lawfully delivered to him; that it was, by competent authority, valued at those sums; that the defendants are thereby concluded as to the value; and that therefore the account ought to stand as it is.

On the other hand, the defendants contend that the old material was not lawfully delivered to him; that it was not, by competent authority, valued at those or any other sums; that he unlawfully received it, and is therefore bound to account to the defendants for it; that though he was charged for it only $2,300, he actually sold 98,748 pounds of it for $8,975.56; to recover which amount from him, less the amount of his just claim against the Government for work done, is the object of the counter-claim.

The facts and documents connected with the counter-claim are set forth fully in the findings, and therefore no more of them need be recounted here than is necessary to a due presentation of the ground of the conclusions reached by the court.

Before stating the facts it is proper to *to* refer to a feature of the case which has attracted our notice, namely, the unusual number of instances in

which matters do not appear which might have been reasonably expected to appear. So far as the non-appearance of those facts may unfavorably affect the claimant's interests, he has no ground for complaint, for he was examined by the defendants as a witness, and his testimony was offered in evidence by the defendants at the trial, so that he had the full benefit of it. If, therefore, he failed in his testimony to unfold the transaction in all its details, it is his misfortune, if not his fault, that facts important to his defense against the counter-claim, if such facts existed, do not appear.

We will now briefly state the facts which have been found bearing on the counter-claim.

In March, 1875, the claimant, learning that plumbing work had to be done on the Quinnebaug, came from Philadelphia to Washington, and had a private interview in regard thereto with Isaiah Hanscom, Chief of the Bureau of Construction and Repair, in Hanscom's office, with no third person present. All that appears in regard to that interview is stated in Finding III, where it is found that some verbal understanding
22 was had between the claimant and Hanscom for the claimant to do the needed work on the Quinnebaug; that Hanscom gave the claimant verbal instructions to go on with the work; that the matter of using in the Quinnebaug old material taken out of other vessels was talked of; and that Hanscom spoke of the old material being of the value of $2,000. What particular material or what quantity of material was referred to by Hanscom is nowhere shown.

This is all that appears in regard to that interview. Upon that slender foundation it was contended by claimant's counsel that a verbal agreement was made between the claimant and Hanscom, and that in persuance of that agreement the old material was rightfully delivered to the claimant. But this theory is conclusively rebutted by the claimant's own act in making to Hanscom a subsequent written proposition to do the work, without referring in the slightest way to that interview; and by the fact that he never did a stroke of work on the Quinnebaug until after the 2d of August; and then not in pursuance of a verbal agreement in March, but of a letter of Hanscom to him, dated the 30th of July. But even supposing there was such a verbal agreement, did it make a contract binding the Government? Manifestly not; for section 3744 of the Revised Statutes provides that "it shall be the duty of the Secretary of War, of the Secretary of the Navy, and of the Secretary of the Interior to cause and require every contract made by them severally on behalf of the Government, or by their officers under them appointed to make such contracts, to be reduced to writing, and signed by the contracting parties, with their their names at the end thereof."

It was at one time contended that this section, as it stood in the act of June 2, 1862 (12 Stat. L., 411), was merely directory to the officers named in it, and not mandatory; but the Supreme Court of the United States held otherwise in Clark vs. United States (95 U. S. R., 539), and said:

"The statute * * * makes it unlawful for contracting officers to make contracts in any other way than by writing signed by the parties. This is equivalent to prohibiting any other mode of making contracts. Every man is supposed to know the law. A party who makes a contract with an officer without having it reduced to writing is knowingly acces-

sory to a violation of duty on his part. Such a party acts in the violation of the law. We are of opinion, therefore, that the contract itself is affected, and must conform to the requirements of the statute."

In the presence of this statute, and this interpretation of it by the Supreme Court, it is utterly futile for the claimant to contend that his conversation with Hanscom had any force whatever as a contract binding the Government.

After the interview between the claimant and Hanscom, the claimant returned to Philadelphia, and on the 6th of April, 1875, wrote to Hanscom a letter in these words:

"SIR: I will furnish all material and labor for the plumbing of the United States steamer Quinnebaug, according to the requirements of the service, and to the satisfaction of the inspecting officer, for the sum of $14,500, and will take, in whole or part payment, any old brass or lead arising from old vessels that can be reworked for that purpose."

This proposal was never agreed to by the Bureau of Construction and Repair, and therefore it has no bearing on the determination of this case.

On the receipt of that letter the Bureau directed Naval Constructor Hartt, at the Philadelphia navy-yard, to draw up specifications
23 of the plumbing work to be done on the Quinnebaug, and to obtain proposals from the ship plumbers in the vicinity to do the work. Such proposals were received, and among them that of the claimant; but none of them was accepted.

A verbal proposition was then made, before the 15th of April, to the claimant, but by whom does not appear, that if he would do the work for $12,000 he could do it, and might proceed at once with it.

The foregoing are all the facts which existed prior to the 15th of April, 1875; and they show that up to that date there had been no sort of contract between the claimant and the Bureau.

Immediately following that date were the transactions out of which has grown the present controversy, which may be succinctly stated as follows:

On that day the Bureau sent to Naval Constructor Steele, at Philadelphia, an order to—

"Have all the old lead, brass, and composition arising from breaking up the monitors, including the Amphitrite, Miantonomoh, and Terror, at the establishments of Messrs. Harlan & Hollingsworth, John Roach, and Wm. Cramp & Sons, carefully weighed, boxed up, and sent to Philadelphia, and report the amount to the Bureau."

Naval Constructor Steele, interpreting this letter as an authority to him to deliver to the claimant the old material referred to, proceeded to deliver to him, from time to time, old material to the amount of 103,949 pounds, as follows: On or before April 29, 49,399 pounds; in the month of May, 44,775 pounds, and between May 31 and July 7, 9,775 pounds.

On the 7th of July ensuing the claimant gave to Naval Constructor Steele two receipts for old material, aggregating the said quantity of 103,949 pounds.

It is for the money received by the claimant from the sale of 98,748 pounds of this old material that the defendants seek a recovery here in counter-claim; and in that connection the first question is, whether the old material was lawfully delivered to the claimant.

In connection with this delivery is one of the remarkable features of

this case. The findings disclose no real explanation of the transaction, though we had before us at the trial the deposition of the claimant and a long report made by Naval Constructor Steele about the matter. It is not pretended that Naval Constructor Steele received any order from a superior officer to make it. So far as appears, it was altogether his own act, resting solely on his own interpretation of the above Bureau order of April 15th to him to have the old material sent to Philadelphia.

How he could have found in the words of that order any even distant seeming of an authority to him to turn the material over to the claimant passes any comprehension we have been able to exercise on the subject. There is there not the least reference to the claimant; not the least authority or permission to deliver possession of the material to any one; but, on the contrary, a mere order to have it brought to Philadelphia, and then "report the amount to the Bureau." This was tantamount to an express order to him to hold the material until otherwise ordered by the Bureau. For him to let it pass from his control without authority from the Navy Department was—to state it mildly—a clear violation of his official duty; and, being such, his act in letting it pass into the claimant's possession could not give the claimant any right or title whatever to or in the material.

24 Not only so, but in delivering the property in question to the claimant, he violated express statutes directly bearing on such a case. Section 1541 of the Revised Statutes is in these words:

"The Secretary of the Navy is authorized and directed to sell, at public sale, such vessels and materials of the United States Navy as, in his judgment, cannot be advantageously used, repaired, or fitted out; and he shall, at the opening of each session of Congress, make a full report to Congress of all vessels and materials sold, the parties buying the same, and the amount realized therefrom, together with such other facts as may be necessary to a full understanding of his acts."

When a statute directs a public officer to do a certain thing in a certain way it is a prohibition of his doing it in any other way, and takes from him all discretion as to how it shall be done. This section not only authorized but directed that material which cannot be advantageously used should be sold, not turned over to a contractor, in consideration of work done by him for the Government, and should be sold at public sale, not bartered away in a private transaction, however honest it might be. And that the Congress might be able to exercise strict supervision over every such matter, the remarkable rule is laid down that the Secretary of the Navy shall at the opening of the next session of Congress make to that body "a full report of * * * all materials sold, the parties buying the same, and the amount realized therefrom, together with such other facts as may be necessary to a full understanding of his acts." We venture the supposition that in the whole body of the Revised Statutes there can hardly be found any description of official action more completely hedged in by restrictive safeguards than this very one of selling old material of the Navy. But there is further legislation bearing on this subject.

Section 3618 of the Revised Statutes provides that—

"All proceeds of sales of old material * * * shall be deposited and covered into the Treasury as miscellaneous receipts, on account of 'pro-

ceeds of Government property,' and shall not be withdrawn or applied except in consequence of a subsequent appropriation made by law."

The effect of those two comprehensive provisions, in our opinion, is to forbid, in the strongest terms, the use of old material in payment for work to be done, or in exchange for other material or for work. If old material can be advantageously used, it must be used by the proper officers for Government purposes; if it cannot be advantageously used, then it must be sold at public sale, and the proceeds of the sale must not be "applied" in payment for other material, or for work, or for any other purpose, but be covered into the Treasury. And yet in the face of these provisions, Naval Constructor Steele turned over to the claimant 103,949 pounds of old material.

It is quite vain to say that the claimant was an innocent receiver of the material, believing that Naval Constructor Steele had a right to deliver it to him, and therefore that he should not be made to suffer the loss consequent on a recovery under the counter-claim. He knew that he was dealing with a public officer, and no doctrine of law is better settled in this court, and everywhere else, so far as we know, than that he who deals with such an officer is bound to know whether the officer's acts are within the scope of his lawful authority. It was perfectly open to the claimant to have ascertained whether Naval Constructor Steele had lawful power to turn over that property to him; but so far as appears, he made not the least inquiry on that point. He, therefore, must bear the responsibility of any untoward results to himself from his own failure to make proper inquiry.

But it was contended by claimant's counsel that, "assuming that the Navy Department had no right to make payment partly in old material, yet they did it, and there is an end." We notice this proposition merely out of respect to the counsel, and not because it seems to us to have any weight.

It is simply an assertion, that if a public officer, no matter how unlawfully, turns over Government property to a supposed contractor, in payment for work done by him, the Government is concluded by that unlawful act, and cannot hold the receiver of the property liable for its value. It is a noteworthy evidence of the willingness of this court to hear in every case all that counsel see fit to urge that it would listen for a moment to a proposition so utterly baseless and indefensible as that.

The sum of the whole matter is, that the claimant, long before any sort of agreement was made between him and the Bureau for work on the Quinnebaug, and when he gave no sort of consideration for the delivery of the old material to him, unlawfully received and sold 98,748 pounds of old material, the property of the defendants, and that he is liable to the defendants therefor.

This brings us to the question of the amount recoverable under the counter-claim. The counter-claim is for money had and received by the claimant for the use of the defendants. As the claimant did not show what expenses, if any, he was put to in preparing the old material for sale, we have nothing before us upon which he could base a demand upon us to reduce the amount found to have been received by him from the sale of it.

The findings show that for the 98,748 pounds of old material which the claimant sold he received	$8,975 56
Add to this the three small lots of material set forth in Finding XI	300 00
And cash paid him as shown in Finding XIII	3,900 00
And the total amount received by him was	13,175 56
Against this he is entitled to a credit for the whole work done by him on the Quinnebaug of	9,600 00
Leaving balance due from him to the defendants	3,575 56

For this balance judgment will be entered in favor of the defendants against the claimant.

26 VIII.—*Final judgment.—February* 18, 1884.

W. FLEET STEELE, TO THE USE OF THE CORN Exchange National Bank of Philadelphia, *vs.* THE UNITED STATES. } No. 12318.

At a Court of Claims held in the city of Washington on the 18th day of February, A. D. 1884, judgment was ordered to be entered as follows:

The court, upon due consideration of the premises both for and against the Government and the claimant, upon the petition of the claimant and the counter-claim of the defendants, finds upon the whole case that the claimant is indebted to the Government in the sum of three thousand five hundred and seventy-five $\frac{56}{100}$ dollars, and do order, adjudge, and decree that the United States do have and recover of and from the said W. Fleet Steele the sum of three thousand five hundred and seventy-five dollars and fifty-six cents ($3,575.56).

27 IX.—*Application of claimant for, and allowance of, appeal.*

W. FLEET STEELE, TO THE USE OF THE CORN Exchange National Bank of Philadelphia, *vs.* THE UNITED STATES. } No. 12318.

From the judgment rendered in the above-entitled cause on the 18th day of February, A. D. 1884, in favor of the defendants, the claimants on this 12th day of May, 1884, makes application for and gives notice of an appeal to the Supreme Court of the United States, the amount in controversy exceeding three thousand dollars.

W. D. DAVIDGE,
R. B. WASHINGTON,
Att'ys for Claimant.

Filed May 12, 1884.

And now, to wit, May 12, 1884, it is ordered by the court that the appeal be allowed as prayed for.

28 In the Court of Claims.

W. FLEET STEELE, TO THE USE OF THE CORN Exchange National Bank of Philadelphia, *vs.* THE UNITED STATES. } No. 12318.

I, John Randolph, assistant clerk of the Court of Claims, do hereby certify that the foregoing are true transcripts of the pleadings in the above-entitled cause, of the findings of fact by the court, and the conclusion of law thereon, of the opinion of the court, of the final judgment of the court, of application of the claimant for the allowance of appeal to the Supreme Court of the United States, and the order allowing same.

In testimony whereof I have hereunto set my hand and affixed the seal of said court at Washington this 16th day of October, 1884.

[SEAL.] JOHN RANDOLPH,
Asst. Clerk Court of Claims.

(Indorsment on cover:) No. 1138. W. Fleet Steele, to the use of the Corn Exchange National Bank of Philadelphia, appellant, *vs.* The United States. Filed 20' October, 1884. Court of Claims.

113-128

SUPREME COURT U.S.
FILED
DEC 22 1884
JAMES R. MCKENNEY
CLERK

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

NO. 1,138.

W. FLEET STEELE

To the use of the Corn Exchange National Bank of Philadelphia, *Appellant*,

vs.

THE UNITED STATES.

Brief for Appellant.

R. O. POLKINHORN & SON, PRINTERS.

Supreme Court of the United States.

OCTOBER TERM.—1884.

No. 1,138.

W. FLEET STEELE, to the use of the Corn Exchange, National Bank of Philadelphia, *Appellant*,

vs.

THE UNITED STATES.

Brief for Appellant.

STATEMENT OF THE CASE.

On the 30th of April, 1880, the appellant filed his petition in the Court of Claims to recover against the United States the sum of $3,400.00 for plumbing work done by him on the U. S. Steamer "Quinnebaug," as evidenced by a bill or voucher made and approved in his favor pursuant to instructions from the Navy Department, (Record, pp. 1-5, 15.)

There is no controversy about the claim evidenced by the voucher. It is admitted that the plumbing work was done on the "Quinnebaug," and that the sum of $3,400 is due to the claimant, below.

But the defendants below interpose three pleas by way of counter-claim and cross demand.

In the first plea they allege that the claimant below is indebted to the defendants below in the sum of $20,000 for money had and received by the claimant to the use of the defendants. (R. 6.)

The second plea is in effect a cross-action of trover for the recovery of the value of certain old materials belonging to the defendants below, and alleged to have been converted by the claimant below to his use. (R. 6.)

In the third plea the defendants below allege that the officers of the government delivered to the claimant below, a large amount of old material, to be utilized and re-worked by him for the plumbing work of the "Quinnebaug." A small portion of the material thus delivered he re-worked, but the greater portion thereof he sold to third parties, realizing therefrom the sum of $20,000. Wherefore he became indebted to the United States in the sum of $20,000. (R. 6.)

Issue was joined on these pleas.

It will be observed that the two amended pleas of set off and cross-demand set forth in the stipulation as to special pleas, (R. 7, 8,) are identical with the first and third pleas referred to above, and filed Dec. 6, 1882. (R. 6.)

The court below rendered judgment in favor of the defendants below for $3,575.56. (R. 21.)

From this judgment an appeal was taken by the claimants below to this court. (R. 21.)

The whole case turns on the counter claim of the defendants below, and the facts as shown by the findings are as follows:

In the month of March, 1875, and thereafter, in that year, while the matters hereinafter set forth were occurring, the claimant was engaged in the city of Philadelphia, Pa., in the business of ship plumbing; and during the same time Robert W. Steele was a naval constructor in the United States Navy, and was on duty as such in said city, *but not in the navy-yard there;* and Edward Hart was a naval constructor in said Navy, and was on duty as such at the Philadelphia navy-yard; and Isaiah Hanscom was Chief of the Bureau of Construction and Repair in the Navy Department. The duty of said Robert W. Steele in Philadelphia was that of superintending the repairing or rebuilding of monitors at

the different yards of Harlan & Hollingsworth, at Wilmington, Del., Cramp & Sons, in the northern part of Philadelphia, and John Roach & Sons, at Chester, Pa. (R., 8.)

In the said month of March the United States steamer Quinnebaug was on the ways in the Philadelphia navy-yard, and the firm of Neafie & Levy, ship-builders, had a contract with the Navy Department to do work on and launch her. All plumbing work on her under the water-line had to be done before she should be launched. (R., 8.)

In the latter part of said month of March, or early in April, the claimant, learning that said plumbing work had to be done, went to Washington, and had an interview in relation to that work with said Hanscom, in the office of the latter, when no third person was present. It does not appear what passed between the claimant and Hanscom in that interview, except that some verbal understanding was had between them for the claimant to do the needed work on the Quinnebaug; that Hanscom gave him verbal instructions to go on with the work; that the matter of using in the Quinnebaug old material taken out of other vessels was talked of; and that Hanscom spoke of the old material being of the value of $2,000; but it does not appear what particular material nor what quantity of material was referred to. (R., 8.)

After said interview the claimant sent to said Hanscom the following letter:

PHILA., *April 6th*, 1875.

SIR: I will furnish all material and labor for the plumbing of the U. S. S. Quinnebaug according to the requirements of the service, and to the satisfaction of the inspecting officers, for the sum of fourteen thousand five hundred dollars, and will take in whole or part payment any old brass or lead arising from old vessels that can be reworked for that purpose.

Respectfully, yours,

W. FLEET STEELE,
Ship-Plumber, No. 3 South st.

(Rec., 9.)

On the receipt of said letter of the claimant the Bureau of Construction and Repair directed Naval Constructor Hart to draw up specifications of the plumbing work to be

done on the Quinnebaug, and to obtain proposals from the ship-plumbers in the vicinity to do the work.

Such proposals were received by the Bureau, but from whom does not appear, except that contained in the aforesaid letter, which was the lowest bid for the work. (R.. 9.)

On the 15th of April, 1875, the Bureau of Construction and Repair addressed the following letter to Naval Constructor Steele:

NAVY DEPARTMENT,
BUREAU OF CONSTRUCTION AND REPAIR,
April 15th, 1875.

SIR: Please have all the old lead, brass, and composition arising from breaking up the monitors, including the Amphitrite, Miantonoma, and Terror, at the establishment of Messrs. Harlan and Hollingsworth, John Roach, and Wm. Cramp & Sons, carefully weighed, boxed up, and sent to Philadelphia, and report the amount to the Bureau.

Very respectfully your ob'd't serv't,

I. HANSCOM,
Chief of Bureau.

(R., 9.)

Naval Constructor Steele, interpreting this letter as an authority from the Bureau to him to deliver to the claimant the old material therein referred to, proceeded to deliver to him, and the claimant received and took into his possession, old material to the amount of 103,949 pounds, property of the defendants; of which there were delivered to him, on or before April 29, 1875, 49,399 pounds; and in the month of May ensuing, 44,775 pounds; and between May 31 and July 7, 1875, 9,775 pounds; and on the last-named date the claimant signed and delivered to Naval Constructor Steele the following two receipts:

Received, Philadelphia, July 7th, 1875, from Naval Constructor R. W. Steele, U. S. N., old scrap material taken from broken-up monitors at Wm. Cramp & Sons' ship-building yard, amounting to 67,109 pounds.

Received, Philadelphia, July 7th, 1875, from Naval Constructor R. W. Steele, U. S. N., old scrap material taken from broken-up monitors at the ship-yard of the Harlan and

Hollingsworth Company, Wilmington, Del., amounting to 36,840 pounds.
(R., 9, 10.)

Of the quantity of 103,949 pounds of old material received by the claimant, he made the following disposition of 98,748 pounds, to wit:

1. April 29, 1875, he turned over 49,399 pounds of old scrap lead, at 6⅛ cents per lb. = $3,025.69, to a party, in payment for new lead purchased by him of said party.
2. May 3, 1875, he sold 18,489 pounds of old brass, at 12½ cents per lb. = $2,311.12.
3. May 18, 1875, he sold 26,286 pounds of old brass, at 12½ cents per lb. = $3,285.75.
4. June 12, 1875, he sold 1,074 pounds of scrap brass at 12½ cents per lb. = $134.25.
5. June 12, 1875, he sold 3,500 pounds of scrap lead, at 6¼ cents per lb. = $218.75.

As to the remainder of the 103,949 pounds, to wit, 5,201 pounds not turned over or sold, as aforesaid, it does not appear what became of it; *but it does appear, that to get the stuff into a condition for reworking or for sale, it required considerable breaking up, handling and sorting, as there was mixed up with the metals a quantity of gum, glass and dirt;* and it is therefore found as a fact that the said quantity of 5,201 pounds was lost in that operation.

(R., 10.)

Immediately after the delivery to the claimant was completed, and on the 9th of July, 1875, Naval Constructor Steele informed Hanscom of the delivery of the 103,949 pounds of old material by the following letter:

PHILADELAHIA, *July 9th*, 1875.

SIR: *In obedience to your instructions*, I respectfully report that there has been delivered to W. Fleet Steele, plumber, of this city, 103,949 pounds of old material from the monitors broken up at the works of the Harlan and Hollingsworth Company, of Wilmington, Del., and from Wm. Cramp & Sons, this city, *embracing brass, lead, iron, putty, glass and gum attached, estimated to be worth $2,000*, which will be deducted from his first payment for the plumbing work on the U. S. S. Quinnebaug. I beg to say

that it was impossible to arrive at a satisfactory estimate of its value when appraised, as there was much alloy and dirt mixed with it, and the cost of transportation and labor in separating and preparing it for use is not known, which makes it necessary to correct the value after I obtain full information on the subject, and before his contract is completed and adjusted.

Very respectfully, your obd't serv't,

R. W. STEELE,
Naval Constructor, U. S. N.

(R., 10, 11.)

Naval Constructor Hartt *who superintended the plumbing work on the "Quinnebaug"* was notified, *at the time of its delivery*, by a messenger from Naval Constructor Steele, of the quantity of old material delivered to the claimant, and that it was scrap material from broken up iron clads, and Hartt subsequently told Naval Constructor Steele that HE, (Hartt,) would *value it upon the same basis as that of the similar old scrap sold or exchanged in removing the yard material from the old Philadelphia Yard to League Island*, and at that rate he supposed its value to be about $2,000. (R., 13.) This statement of its value was made to Naval Constructor Steele *on or before July 9th, 1875*, for it led Naval Constructor Steele to state in the above letter of July 9th, 1875, that the 103,949 pounds were estimated to be worth $2,000. (R., 13.) Naval Constructor Hartt *then assumed* its value to be $2,000, and *so set it down in an account book in his office*, and so charged it against the claimant in the settlement of the account of the latter. (R., 13.)

On the 30th of July, 1875, said Hanscom sent to the claimant the following letter:

NAVY DEPARTMENT, BUREAU OF CONSTRUCTION AND REPAIR,
Washington, July 30th, 1875.

SIR: *Referring to your offer of the 6th of April, 1875*, to do all the plumbing work on the Quinnebaug for the sum of $14,500, the bureau considers the sum named too high, and proposes to you that you shall do all the necessary plumbing work.

* * * * * *

And in consideration of your doing the work as above set forth, the bureau agrees to pay the sum of twelve thousand dollars ($12,000). The old materials the Government will furnish to you to be reworked, *which have accumulated from the breaking up of the light-draught monitors* Koka and Minnetonka *at Wilmington, Del.*, and the Algoma and Otsego, *at the works of Cramp & Sons, Philad'a.*, will go towards the materials used in this work. *The balance to be paid in two equal payments, in money, on the certificate of the Naval Constructor superintending the work that the work is satisfactorily completed* according to the specifications which will be furnished.

Please notify the bureau in writing of your acceptance of this proposition.

Respectfully, &c.,

I. HANSCOM,
Chief of Bureau.

To this letter the claimant returned the following answer:

PHILADELPHIA, *August 2d*, 1875.

SIR: I accept the proposition and terms of your letter of July 30th, 1875, and will proceed with the work to completion as rapidly as the vessel may be prepared for the reception of the same, for the sum of twelve thousand dollars, "as named by you," utilizing and reworking the old material delivered to me for that purpose.

Respectfully, &c.,

W. FLEET STEELE,
Ship-Plumber.

It does not appear that the claimant did any work on the Quinnebaug until after this correspondence took place.

Before the 12th of August, 1875, Hanscom *knew* from the letter of Naval Constructor Steele, of July 9th, 1875, that 103,949 pounds of old material had already been delivered to the claimant. (Finding X., R., 12.)

Yet, on the 12th of August, he wrote to George Henry Preble, U. S. N., the Commandant of the Philadelphia Navy Yard as follows:

> "Enclosed please find copy of a proposition made by the bureau to Mr. W. Fleet Steele to do the plumbing

work on the Quinnebaug for the sum of $12,600, which has been duly accepted by him, and the specifications for doing the work are herewith forwarded.

You will please direct the Naval Constructor superintending the work to have it proceeded with as rapidly as the other work on the Quinnebaug will allow.

With regard to the old materials to be furnished, as mentioned in the letter enclosed, they will be supplied to the contractor *at a fair valuation*, and when the work, in the opinion of the superintendent, has sufficiently progressed to entitle the contractor to the first of the two money payments provided for in the agreement, bills for the same will be made and certified *by him* for the approval of the bureau." (R., 12.)

Pursuant to this letter the claimant, between August 21st and November 29th, 1875, removed from the Philadelphia Navy Yard, under written passes given to him, sixteen loads of plumbers' old material. All these passes were signed either by Naval Constructor Hartt or the Assistant Naval Constructor, at the Philadelphia Yard, John B. Hoover, and referred, *on their face*, to the order contained in the above letter of August 12th, 1875. (R., 13.)

On account of the material removed in said sixteen loads, the claimant was charged August 21st with $50, September 4th with $50, and November 21st with $200, the first two of which sums were deducted from the money due him for work on the "Quinnebaug," as shown in the settlement of his first account, (Finding XIII, R., 13, 14,) and the last was debited to him in the final statement of his second account, as shown in finding XIV. (R., 14, 15.)

The claimant proceeded to do the plumbing work on the Quinnebaug, and on the 8th of November, 1875, the following bill was made out and approved in his favor, and he received payment thereof:

THE U. S. NAVY DEPARTMENT,
To FLEET STEELE, *Dr.*

Appropriation, Construction, and Repair,
Bureau of Construction and Repair:

To one-half ($\frac{1}{2}$) cost of plumbing of Quinnebaug, less value of old materials, $3,900.

Bureau order Aug. 11, 1875.

Having fully examined the above charges, I certify the same are correct.

JOHN B. HOOVER,
Ass't Naval Constructor, U. S. N.

CONSTRUCTOR'S OFFICE, U. S. NAVY YARD,
Philadelphia, Nov. 8, 1875,

Approved for the sum of three thousand nine hundred dollars.

GEO. HENRY PREBLE,
Commodore, Commandant.

(R., 13, 14.)

On the 28th of September, 1876, Hanscom wrote to Captain C. H. Wells, U. S. N., commandant of the navy-yard at League Island, as follows:

> "You will please appoint a board, consisting of the naval constructor, assistant naval constructor, and the foreman plumber of the yard under your command, who will examine the plumbing work of the U. S. S. Quinnebaug, now at the yard of Messrs. Neafie & Levy, Philadelphia, and report what proportion of said work has been done up to date by W. Fleet Steele, under his agreement of July 30, 1875; also reporting the sum which in their opinion is now due him, estimating on the basis of the agreed amount ($12,000), which, under agreement referred to, he was to receive for doing the entire plumbing work of that vessel.
>
> "When the report is submitted, you will please have bills made for the amount stated by the board to be due, forwarding same to the Bureau with report."

In pursuance of this request, Captain Wells appointed the Board, which made the following report to him:

NAVAL CONSTRUCTOR'S OFFICE, U. S. NAVY YARD,
LEAGUE ISLAND, PA., *October 2d*, 1876.

* * * * *

We have to report that, upon a careful examination and estimate of the work referred to, we find that about eight-tenths ($\frac{8}{10}$) has been completed in accordance with the agree-

ment, which entitles him to receive, in old plumbing materials and money, the sum of nine thousand six hundred dollars ($9,600) in all.

Mr. Steele has received approved bill, dated Nov. 8th, 1875, for $3,900, and old materials valued at $2,100	$6,000 00
And has since received old material valued at	200 00
Total payment	6,200 00

We are of the opinion that the sum due him to this date is three thousand four hundred dollars ($3,400).

(Finding XIV., R. 14, 15.)

On the 5th of October, 1876, Captain Wells made out and certified the following bill of the work done by the claimant, as reported by said Board:

THE U. S. NAVY DEPARTMENT,
To W. FLEET STEELE, *Dr.*

Appropriation, Construction and Repair Bureau of Construction and Repair.

Balance due for plumbing work on U. S. S. Quinnebaug, per agreement dated July 30, 1875, as per report of board, Oct. 2, 1876	$3,400 00
Entered— WM. J. MANNING, *Clerk to Com'd't.*	$3,400 00

Having fully examined the above charges, I certify the same is correct.

PHILIP HICHBORN, N C.,
NAVAL CONSTRUCTOR'S OFFICE,
U. S. Navy Yard, League Island,
October 5, 1876.

NAVY YARD, LEAGUE ISLAND,
October 5th, 1876.

This bill is approved for the sum of thirty-four hundred dollars — cents, $3,400.

C. H. WELLS,
Captain Commanding.

(R., 15.)

The claimant performed eigh-tenths of the work on the Quinnebaug which was to be done by him; and the value of the work he did was $9,600, on account of which he has been paid $3,900 in money. The other two-tenths of the work was done by the Government.

(Finding XVI., R. 16.)

On the 1st of December, 1876, the claimant sold the voucher set forth in finding XV. to the Corn Exchange National Bank of Philadelphia, for value, and without knowledge by, or notice to, said bank of any objection to or infirmity in the voucher or in the claim represented by it. The president of the bank, before making the purchase, was assured by a Mr. Russell, who was Navy Agent, or Pay Agent, or Pay Director, in Philadelphia, for the Government; and that the voucher was as good a voucher as could be made by the Government, nd said Russell recommended him to buy it.

(Finding XVII., R. 16.)

Assignment of Errors.

The court below erred in its conclusion of law that the appellees are entitled to recover from the appellant, under the counter claim the sum of $3,575.56, (R. 16), and in rendering judgment against the appellant for that amount. (R. 21.)

2. The court erred in not rendering judgment in favor of the appellant for $3,400.00. (R., 15.)

Argument.

1. This is an extraordinary case, and one that appeals strongly to the equitable consideration of this Court.

On the first of December, 1876, the Corn Exchange National Bank of Philadelphia purchased for value from the claimant below, the voucher on which the suit is based without knowledge by, or notice to the bank, of any objection to, or infirmity in the voucher, or the claim repre-

sented by it. The president of the bank, before making the purchase was assured by the Pay Director for the Government at Philadelphia that the voucher was good, and recommended him to buy it. (R. 16.)

As this transfer is not recognized under the laws of the United States, the Bank commenced suit in the Court of Claims upon the voucher in the name of the original claimant. The claim was not disputed by the United States, but a counter claim was set up for the value of old material delivered to the claimant under a contract with the Navy Department which had been settled for in an old account. The court below allowed the claim, but rendered judgment in favor of the United States, under the counter claim for $3,575.56. Thus the Bank lost the amount of the voucher and the innocent claimant who allowed his name to be used for the protection of the Bank was burdened with an oppressive judgment.

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2. It will be observed there is no allegation in the pleadings of mistake, or fraud, or mis-representation or concealment on the part of the claimant, or on the part of any one connected with the transaction, nor do the findings show that there was any mistake, fraud, or mis-representation or concealment on the part of any one.

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3. It may be proper to state here, that under the law, all orders issued by the Bureau of Construction and Repair of the Navy Department, are considered as emanating from the Secretary of the Navy, and have force and effect as such.

U. S. Revised Stat., Sect. 420.

4. The letter of the Bureau, dated April 15th, 1875 (R. 9) was *properly interpreted* by Naval Constructor Steele, as an authority from the Bureau to deliver to the claimant the old material therein referred to, and the burden of proof was on the defendants below, to show affirmatively that this letter had a different meaning and intent.

In the latter part of March, or early in April, 1875, the claimant, a ship plumber in Philadelphia, learning that the plumbing had to be done on the "Quinnebaug," went to Washington and had an interview in relation to the work with Mr. Hanscom, the chief of the Bureau.

At this interview, some verbal understanding was had between them for the claimant to do the needed work on the Quinnebaug, and Hanscom gave him verbal instructions to go on with the work, the matter of using in the Quinnebaug old materials taken out of other vessels was talked of, and Hanscom spoke of the old material being of the *value of $2,000.* (R., 8.)

It is true "it does not appear," that is to say, *there was no evidence to show*, what particular material or what quantity of material was referred to by Hanscom (R., 8). But enough was said to lead the claimant to think that he might get the contract, and that old plumbing material would be furnished him in part payment. So, upon his return to Philadelphia, and on the 6th of April, 1875, he wrote to Hanscom that he would furnish the materials and do the plumbing for $14,500 and "take in whole or part payment any *old brass or lead* arising from old vessels" that could be re-worked for that purpose. (R., 9).

Upon the receipt of the letter, the Bureau directed Naval Constructor Hartt to obtain proposals from other ship plumbers for the work. They were received by the Bureau, but the bid contained in the letter of the claimant was the lowest. (R., 9).

On the 15th of April, 1875, the Bureau addressed the following letter to Naval Constructor Steele:

SIR: Please leave all the *old lead, brass* and composition arising from breaking up the monitors, including the Amphitrite, Miantonomah and Terror, at the establishments of Messrs. Harlan & Hollingsworth, John Roach and William Cramp & Sons, carefully weighed, boxed up and sent to Philadelphia, and report the amount to the Bureau." (Finding VI., R., 9, 10.)

Naval Constructor Steele interpreted this letter as an authority from the Bureau to deliver the old material therein referred to to the claimant, and he delivered the 103,949 pounds accordingly. The last delivery was made between May 31 and July 7, 1875, (R. 10,) and *two days afterwards*, namely, on the 9th of July, 1875 he reported to Hanscom

that "*agreeably to his* (Hanscom's) *instructions*" the delivery had been made. (R. 10.)

Hanscom had talked with the claimant about using in the Quinnebaug old materials taken from other vessels. When, therefore, Hanscom directed Naval Constructor Steele to have the *old lead and brass, the very articles enumerated in the claimant's letter of April 6th*, carefully weighed, boxed up and sent to *Philadelphia*," is it not reasonable to suppose that he knew exactly what their destination was to be, and, in the absence of proof to the contrary is it not a wild assumption to say that Hanscom's arder was *misinterpreted*? What was Naval Constructor Steele to do with the debris? *He was not connected with the Philadelphia Navy Yard*, (R. 8,) and at that time they were getting rid of "similar old scrap" at the Navy Yard, by sale or exchange, to remove to League Island. (R. 13.) Was Steele to deposit the stuff on the sidewalk on Chestnut street? Was he to send it to the Centennial Exposition? Is there not every presumption and intendment in the absence of proof to the contrary that he understood the meaning of his instructions? Would he, a subordinate, have reported *immediately* to Hanscom that the delivery had been made *under his* (Hanscom's instructions,) unless he knew he was obeying orders?

The claimant's proposal of April 6th, 1875, was not formally accepted *in writing* by the Bureau until July 30th, 1875, and after the delivery, and then the bid was reduced from $14,500 to $12,000. But it was a fact in proof at the trial below, and it is cited as a fact in the opinion of the court, (but omitted in the findings,) that after the date of the claimant's offer, and before the *15th of April, 1875*, *a verbal proposition* was made to him, that if he would do the work for $12,000 he could do it and proceed at once with it. (Opinion, R. 18.) It is true "it does not appear," that is, there was no evidence to show by whom this proposition was made, but every intendment is that it was made by those authorized to make it.

In its formal written proposition of July 30, 1875, the Bureau refers to the claimant's offer of April 6th, states it is too high, and proposes that the claimant shall do the work for $12,000. It then proceeds as follows:

> "The old materials the Govenment will furnish you to be reworked, which have accumulated from the breaking up of the light draft monitors Koka and Minnetonka at Wilmington, Del., and the Algoma and Ostego at the works of Cramp & Sons, Philadelphia, will go towards the materials used in this work. The balance to be paid in two equal payments in money." (R., 11.)

Now, the material delivered to the claimant is the *identical material* described in this letter, namely, that from Wilmington, Del., and Cramp & Sons.

At the time of the delivery, Naval Constructor Hartt was notified by Naval Constructor Steele of the quantity delivered, and that it was scrap material from broken-up iron clads. Hartt then valued it at $2,000, *and so set down in account book in his office.* (R., 13.)

Would Hartt have presumed to put a valuation on the material and have entered that valuation in his official book, and have so charged it against the claimant in the settlement of his first account, unless he knew the material had been lawfully delivered?

Before the bill for the first of the two money payments was made out, Hanscom *knew* that the 103,949 pounds had been already delivered to the claimant (R., 12), yet he made no objection to the delivery, nor did he object that Naval Constructor Steele had exceeded his instructions, but *with this knowledge*, on the 12th of August, 1875, he wrote to Geo. Henry Preble, Commandant of the Philadelphia Navy Yard, that the old material "will be supplied to the contractor *at a fair valuation*," and directed that Naval Constructor Hartt should make out and certify the bill for the first payment (R., 12). *Pursuant to this order*, the sixteen loads of old material from the Philadelphia Navy Yard were delivered to the claimant (R., 13), and on the 8th of November following, Hartt certified to and the commandant approved the bill charging $2,100 for the old material. (Finding XIII., R., 13, 14).

We hold, therefore, that the 103,949 pounds were delivered to the claimant under the instructions of the Navy Department, and that the fact of its delivery before, or in anticipation of the written contract cannot prejudice the claimant.

5. Even if Naval Constructor Steele had delivered the old material without authority, express or implied, from the Bureau, yet in the absence of proof of knowledge, fraud, collusion or fault on the claimant's part, he cannot be held accountable for the profits he subsequently realized after bestowing his labor and skill upon the property; and as the delivery was reported immediately to the Bureau, (R. 10,) the want of dissent on its part was in effect an acquiescence and ratification of the act of its subordinate.

Judge Story says:

> "Long acquiescence without objection, and even the silence of the principal will, in many cases, amount to a conclusive presumption of the ratification of an unauthorized act, especially where such acquiescence is otherwise not to be accounted for, or such silence is either contrary to the dutie of the principal, or has a tendency to mislead the agent."
>
> Story on Agency, (8th Ed.,) Sect. 253.

In *Law* vs. *Cross*, 1 Black., (U. S.,) 533, it is held that when an agent goes beyond the letter of his instructions, the principal must, within a reasonable time, repudiate the act, or else he is bound by his acquiescence.

See *Kelsey* vs. *The Nat'l Bank of Crawford Co.*, 69 Penn., St. R. 426.

6. But it will be contended that even the *Navy Department* had no power to make the contract to pay partly in old material belonging to the navy, and that it could only dispose of such property at public sale.

Even if this proposition were correct, which we are by no means ready to admit, still, after a contract *has been executed*, and part payment made in property of the navy to an innocent party and the account settled, it is too late, especially after the lapse of more than six years (the counter claim was not filed until Dec. 6th, 1882, R., 6), to interpose a cross action for the recovery of its value. The proposition is inequitable in the highest degree. It is matter of history that vast quantities of old material of the navy, the wrecks of a long war, were sold by the Navy Department, especially at the Philadelphia Navy Yard, about the time the delivery was made to the claimant, without a pub-

lic sale. Can the Government ransack the work shops of the country, find out the profits made by the purchasers after they had bestowed their skill and labor in transforming the property and débris purchased, and recover those profits in the courts? Yet that is what has been done in this case, withthis difference, that here the property was not sold, but it was turned over to be reworked in a naval vessel by the proper officers of the Navy Department.

The defendants will probably rely, as does the court below, upon the following provision of the Revised Statutes in support of the position that the material could not be disposed of except at public sale:

> "The Secretary of the Navy is authorized and directed to sell at public sale, such vessels and materials of the United States Navy as, *in his judgment, cannot be advantageously used, repaired or fitted out.*"
>
> U. S. Rev. Stat., Sect. 1541.

Now if the Secretary of the Navy makes a contract for the plumbing work on one of its vessels, and agrees to furnish to the contractor old material to be *reworked* for that purpose *at a valuation*, and such contract is fully executed, it is going altogether too far to say tbat such contract can be treated as a nullity, and the Government can recover the profits realized from the material delivered to the contractor. If, *in the judgment* of the Secretary, the material can be *advantageously used*, he may use it as he sees fit.

Where a statute confides a discretion to an officer, the party dealing with him in good faith may assume that the discretion is properly exercised. If the discretion be vested in a superior, while the transaction is with the subordinate, the contractor may assume that the discretion has been properly exercised, and that the subordinate is acting in accordance with his superior's orders.

Thomson vs. *U. S.*, 9 Ct. of Claims, 187.

7. Under the contract the old material was to be a part payment of the contract price, $12,000, and the *balance* was to be paid *in money* in two equal payments (R. 11, 12). It is immaterial whether the claimant actually "reworked" the old material and put it in the vessel, or sold it and supplied new lead and brass in its place. In either case a *val-*

uation was to be placed upon the old material, and that valuation was to be charged as part of the contract price. The claimant furnished the material and work the contract called for to the satisfaction of the Government.

8. The value of the 103,949 pounds delivered to the claimant, was first fixed by Naval Constructor Hartt, and he so set it down in an account book in his office, and so charged it against the claimant in the settlement of the account with the latter (Finding XIII., R., 13.) Subsequently the bill for the first payment, dated November 8, 1875, was made out and certified by Hartt *under the order of the Bureau* (Finding X., XIII., R., 12, 13, 14), and *it was approved by Geo. Henry Preble*, the commandant, who had been antecedently instructed by the Bureau that the old material was to be supplied to the contractor "*at a fair valuation*" (R. 12). The claimant had nothing to do with making out this bill. The bill showed on its face that it was made out by the Bureau's order. When it was made out, one-half of the plumbing work had been done, and there was due to the claimant $6,000—one-half of 12,000—the contract price. He had received the 109,949 pounds, valued at $2,000 (R., 13), and old material from the Philadelphia Navy Yard valued, August 21st and September 4th, previously, in two sums of $50 each (R., 13), making in all $2,100. This amount was deducted from the $6,000, leaving a balance due him in money of $3,900, for which amount the bill was approved, and he received payment (R., 13, 14, 15).

9. Although a value was fixed on all the old material delivered to the claimant by officers authorized by the Government, and a settlement made accordingly, yet it will be contended that "*no survey or inspection appears* to have been made by any officers with a view of appraising its value" (R., 13), that is, there was *no evidence* that such survey or inspection had been made. Well! what of it? Even if it was a fact, which we deny, was it not incumbent on the defendants to prove it if material to their case? *We are standing upon a stated, settled and paid account.* They are assailing it, going back of it, and trying to re-open it. Is not the burden of proof on them to show affirmatively all the facts requisite to impeach the account? And is it

not simply absurd to put the burden on us? The officers making the settlement are presumed to have acted in the line of their duty until the contrary is shown, and even if they acted carelessly or negligently, the claimant cannot be prejudiced without fault on his part.

Where the parties have adjusted an account, struck a balance and agreed upon the amount due, *courts are exceedingly unwilling to open it up again*, unless there has been fraud or it is *very clear* there has been a mistake (*Kock* vs. *Bonitz*, 4 Daly, 117). "For," says Chief-Justice Marshall, "no practice could be more dangerous than that of opening accounts which the parties have themselves adjusted, *on suggestions supported by doubtful, or by only probable testimony.*"

Chappedelaine vs. *Decheneaux*, 4 Cranch., 306.

When an account is so settled by the parties, and there is no unfairness, and all the facts are equally well-known by both sides, the adjustment is final and conclusive.

Hager vs. *Thompson*, 1 Black., (U. S.) 80;

See also to the same effect,

Carroll vs. *Paul*, 16 Mo., 226;
Costin vs. *Baxter*, 6 Ired. (N. C.) Eq. 107.

Generally a court of equity will not open an account by decree after six years of delay unaccounted for.

George vs. *Johnson*, 45 N. H., 456.

Where parties have made a full and final adjustment of their accounts, and there is no pretense of fraud or imposition, there must be conclusive evidence of fraud or mistake to induce the court to open the account.

Wilde vs. *Jenkins*, 4 Paige, (N. Y.) ch. 481;
Lockwood vs. *Thorne*, 11 N. Y., 170.

10. The 104,949 pounds of old material was simply *debris*, embracing brass, lead, iron, putty, glass and gum attached, and much alloy and dirt (Findings VII., VIII., R., 10, 11). *It had no regular market value*, and there was no evidence to show its value at the time of its delivery, except the statement of Hartt, made before July 9th, 1875

that "he would value it upon the same basis as that of the *similar old scrap sold or exchanged* in removing the yard material from the old Philadelphia yard to League Island," and then Hartt entered its value at $2,000 in his official book. In the absence of other proof, then $2,000 ought to be taken as its market value at the time of its delivery.

Evidence of actual sales of other similar property to that in question may be shown.

> Sutherland on Damages, Vol. I., p. 799.
> *Paine* vs. *Boston*, 4 Allen, 799;
> *Truitt* vs. *Baird*, 12 Kan., 420.

> "When the value at the time in question cannot be directly proved, it may be inferred from circumstances. Among those which may be proved are sales at other times near that date."
>
> Sutherland on Damages, Vol. I., pp. 795, 796;
> *Benham* vs. *Dunbar*, 103 Mass., 365.

11. After the conversion, and after "considerable breaking up, handling and sorting to get the stuff into a condition for reworking or for sale" (R. 10), the claimant separated the old lead and brass from the debris and alloy, and subsequently sold the lead and brass at different times to different parties for $8,975.56, in the aggregate. (R. 10.) The quantity he did not sell was lost in the manipulation. (R. 10.) Now the court below has held the claimant accountable for the difference between $2,000 and $8,975.56, the profits realized from the property after the claimant had bestowed upon it his skill and labor. This is illegal and unjust. Even if was a *tortious conversion* on the part of the claimant, the value fixed upon it at the time of its delivery, *which was the time of its conversion, and not the claimant's subsequent profits* should be taken as the measure of damages. The Government is estopped from recovering a higher value than $2,000. It is to be noticed there never was any demand for the return of the property on the part of the Government.

Mr. Sedgwick says:

> "It appears to me that on principle, unless the plaintiff has been deprived of some particular use of his

property of which the other party was apprised, and which he may be thus said to have directly, prevented the rights of the parties are fixed at the time of the illegal act, be it refusal to deliver or actual conversion, and that the damages should be estimated at that time."

Sedgwick on M. of Damages, (7th Ed.,) 1880, Vol. II., p. 391.

Mr; Sutherland in his late work on damages, (1883) says:

"The conversion may occur first by a wrongful taking. To be a certain legal measure of damages it should be applied inflexibly to the first act of conversion, especially if there be no subsequent pursuit of the property or assertion of right to it in specie. No change of property by the wrongdoer should suffice to give to the owner a new cause of action or a new date for the valuation of the property. After a conversion, *a sale by the defendant at a price greater than the value at the time of the conversion*, should not change the rule, and it has been held that it does not."

Sutherland on Damages, Vol. III., pp. 489, 490.

See to the same effect—

Kennedy vs. *Whitwell*, 4 Pick., 466;
Whitehouse vs. *Atkinson*, 3 C. & P., 344.

Mr. Sutherland further says:

"When the owner sues (*in trover*) for a conversion and asks damages therefor, the injury to be compensated is not affected at all by the use which the defendant has subsequently made of the property. Instead of the value added by the defendant, the value at the time and place of the conversion, is the rule founded and now supported *by a decided preponderance of authority?*"

Sutherland on Damages, Vol. III., p. 512.

In *Reid* vs. *Fairbanks*, (13 Common Bench, R, English,) 721, Maule, J., says:

"The damages *in trover* are the value of the thing converted. The fact of the defendants having used

it profitably after the conversion gives the plaintiff, I apprehend, no title to damages."

See, also, *Maye* vs. *Yappen*;
Single vs. *Schneider*, 30 Wis., 570;
Stockbridge Iron Co. vs. *Cone Iron Works*, 102, Mass., 80.

In trespass *and trover* for a quantity of logs, held the measure of damages was the value of the logs in the woods where they were taken, and not at the mill where they were taken to be sawed.

Tilden vs. *Jackson*, (1880) 52 Vermont, 628;
McLean Co. Coal Co. vs. *Long*, 81 Ill's, 359.

The rule for the measure of damages for the wrongful taking or detention of property, is to be determined by the *animus* of the conversion. If the act was in good faith upon some supposed right of claim, the measure will be the value of the property *at the time it was taken.*

Heard vs. *James*, 49 Miss., 236;
Bennett vs. *Thompson*, 13 Ired., (N. C.) 146;
Cushing vs. *Longfellow*, 26 Me., 306;
U. S. vs. *Maggon*, 3 McLean, 171;
Weymouth vs. *Chicago, etc. R. R. Co.*, 17 Wis., 550.

In a late leading case in Ohio, which was elaborately considered, it is held that in an action for the conversion of chattels against an innocent purchaser who had previously converted the property to his own use, *and had afterwards added to its value by his own labor*, the measure of damages is the value of the chattel *when first taken from the owner*, whether the first taker was a willing or involuntary trespasser.

R. R. Co. vs. *Hutchins*, 37 Ohio St., R., 282.

A purchaser of a chattel from one who has no power to sell it, when the purchaser takes and retains possession of it under the sale, is a conversion of the chattel.

Howard vs. *Cooper*, 45 N. H., 339.

12. It is stated here and there in the findings, that certain facts "*do not appear*" *in evidence.* Whenever these facts

are at all material, a careful analysis of the findings will show that the burden of proof was on the defendants to prove them. The claimant's case is fully developed in the findings, and amply unfolded in all essentials.

13. It is not contended by the claimant that the verbal understanding between him and Hanscom, as set forth in Finding III., had force as a binding contract.

W. D. DAVIDGE,
R. B. WASHINGTON,
Att'ys for Appellant.

OFFICE SUPREME COURT U. S.
FILED
DEC 22 1884
JAMES H. McKENNEY,
CLERK.

113-128

In the Supreme Court of the United States.

OCTOBER TERM, 1884.

STEELE, &c.,
vs.
THE UNITED STATES. } No. 1138.

BRIEF FOR THE UNITED STATES.

There is perhaps upon the brief of the learned counsel for the appellant some appearance of a wish to modify the *findings* below, as a ground for the argument here. In view of the impossibility of this being effected, I assume that I am mistaken in the supposition.

Otherwise the opinion of the learned Court of Claims, given in the record, is relied upon as a full and satisfactory presentation of the case in behalf of the United States.

S. F. PHILLIPS,
~~Attorney-General.~~
Solicitor-General.

113-135

TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 119.

PHILADELPHIA BAR ASSOCIATION

THE INDEPENDENT SCHOOL DISTRICT OF ACKLEY, HARDIN COUNTY, IOWA, PLAINTIFF IN ERROR,

vs.

F. G. HALL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

FILED OCTOBER 17, 1881.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1884.

No. 119.

THE INDEPENDENT SCHOOL DISTRICT OF ACKLEY, HARDIN COUNTY, IOWA, PLAINTIFF IN ERROR,

vs.

F. G. HALL.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE DISTRICT OF IOWA.

INDEX.

	Original.	Print.
Caption	1	1
Petition	4	1
Exhibit A—Bond of Independent School District of Ackley, Hardin county, Iowa	11	3
B—Coupon of bond	12	3
Præcipe for summons	14	4
Summons	16	4
Marshal's return	17	4
Order of default and judgment	19	5
Affidavit of Galusha Parsons to set aside judgment	22	5
Motion to set aside judgment	24	6
Order setting aside default and judgment	26	6
Answer	28	7
Stipulation to waive jury	36	9
Præcipe for appearance	38	9
Order granting leave to amend pleadings, &c.	40	9
Trial notice	42	10
Order granting leave to file amended answer	44	10
Amended answer	46	10
Reply	50	11
Hearing	53	12

JUDD & DETWEILER, PRINTERS, WASHINGTON.

	Original.	Print.
Judgment	55	12
Trial notice	58	13
Allowance of writ of error	60	13
Bond	62	14
Writ of error	66	15
Citation	69	15
Clerk's certificate	70	16

1-2 Pleas in the circuit court of the United States for the district of Iowa, central division, at a term thereof, begun and holden in the United States court-house, in the city of Des Moines, in said district, before the Hon. George W. McCrary and Hon. J. M. Love, judges, on the tenth day of May, A. D. 1881.

Attest: E. R. MASON, *Clerk.*

3 Be it remembered that heretofore, to wit, on the 22d day of November, 1878, came F. G. Hall, by Nourse, Kauffman & Co., his attorneys, and filed in the clerk's office of said court his petition against the Independent School District of Ackley, Hardin county, Iowa, which said petition is in the words and figures following, to wit:

Petition.

4 In the Circuit Court of the United States in and for the District of Iowa.

F. G. HALL

vs.

THE INDEPENDENT SCHOOL DISTRICT, ACKLEY, HARDIN COUNTY, IOWA.

Plaintiff, F. G. Hall, a citizen and resident of the State of New York, claims of the defendant, a body corporate, organized and existing under and by virtue of the laws of the State of Iowa, relative to the incorporation of independent districts for school purposes, and a citizen of the said State of Iowa, the sum of four thousand dollars, with interest on one thousand dollars thereof, at the rate of ten per cent. per annum, payable semi-annually, from the first day of May, 1872, and with interest upon each semi-annual installments of interest from the time they matured at the rate of six per cent. interest per annum, and with interest upon three thousand dollars
5 of said amount at the rate of ten per cent. per annum, payable semi-annually, from the first day of May, 1874, and interest upon each of said semi-annual and matured installments of interest at the rate of six per cent. per annum from the maturity of each installment. And for cause of such claims shows to the court as follows, to wit:

That heretofore, to wit, on or about the first day of November, 1869, the Independent School District of Ackley, in Hardin county, Iowa, being a corporation organized and existing under the laws of the State of Iowa for school purposes, and being duly incorporated as an independent school district, under and by virtue of the acts of the Legislature of said State, and being duly authorized by chapter 98, acts of the 12th General Assembly of the State of Iowa, to issue bonds for the purposes therein specified, did execute and deliver to Foster Brothers, payees therein, eight certain negotiable
6 bonds for the sum of five hundred dollars each, and numbered from one to eight, inclusive, a copy of one of which bonds is hereto attached and made a part hereof, marked Exhibit "A," all the other of said bonds being of like tenor and effect, except as to number and date of maturity.

That two of said bonds, to wit, bonds numbers one and two, were payable on the first day of May, 1872, with interest at the rate of ten per cent. per annum, payable annually, on the first day of May and November in each year after date, and that the interest is unpaid upon the said bonds numbered one and two from the date of their maturity, to wit, the first day of May, 1872, and there remains due upon the said bonds the principal sum thereof, and interest at the rate of ten per cent. per annum, payable semi-annually, from the first day of May, 1872, and interest upon each installment of interest at the rate of six per cent. per annum from the time the said installments matured.

7 That bonds numbered three, four, five, and six matured on the first day of May, 1874, and bore a like rate of interest, payable in like manner, and that the interest is due and unpaid on each of said last named bonds from the first day of May, 1874, in addition to the principal sum of said bonds. That bonds numbered seven and eight matured on the first day of May, 1875, and that the interest coupons attached thereto, maturing on the first day of November, 1874, and the first day of November, 1875 respectively, remain due and unpaid, together with interest upon said bonds at the rate and payable at the times hereinbefore set out as to the other bonds, with interest upon interest as aforesaid. A copy of one of said interest coupons, maturing on the first of November, is hereto attached, marked Exhibit "B," the other three interest coupons being of like tenor and effect, except that two of them matured on the first day of May, 1875, as hereinbefore set out, and the said interest coupons are still unpaid, though payment has been de-

8 manded, and are due, with six per cent. interest thereon.

That the said bonds were each and all made payable to the order of Foster Brothers, who endorsed and negotiated the same, the said endorsement being by writing, the name Foster

9 Brothers in blank upon the back of each of said bonds.

That the said bonds, by subsequent transfer and negotiation, ultimately came into the hands of your petitioner, together with the interest coupons hereinbefore set out, and are now the property of your petitioner.

Wherefore your petitioner prays for judgment against said defendant for the said sums respectively hereinbefore set out, with interest as hereinbefore claimed specifically, and interest upon interest, and for costs of suit.

(Signed) NOURSE, KAUFFMAN & CO.,
Attorneys for Petitioner.

10 UNITED STATES OF AMERICA, *District of Iowa.*

I, B. F. Kauffman, on oath state that I am a member of the firm of Nourse, Kauffman & Co., attorneys for plaintiff in the above entitled cause; that as such attorneys we are in possession of the bonds and interest coupons sued on herein, and that the allegations of the foregoing petition are true, as I verily believe.

(Signed) B. F. KAUFFMAN.

Subscribed and sworn to before me, in my presence, on this 22 day of November, 1878.

[SEAL.] J. A. JACKSON,
Notary Public in and for Polk County, Iowa.

11 Copy. EXHIBIT "A."

No. 1. $500 00.

Independent School District, Ackley, Hardin County, Iowa.

The Independent School District of Ackley, Hardin county, Iowa, promises to pay to Foster Brothers, or order, at the Hardin County Bank, at Eldora, Iowa, on the 1st day of May, 1872, five hundred dollars for value received, with interest at the rate of ten per cent. per annum, said interest payable semi-annually, on the 1st day of May and November in each year thereafter, at the Hardin County Bank, at Eldora, on the presentation and surrender of the interest coupons hereto attached.

This bond is issued by the board of school directors by authority of an election of the voters of said school district, held on the 23d day of August, 1869, in conformity with the provisions of chapter 98, acts 12 General Assembly of the State of Iowa.

In testimony whereof the said Independent School District, by the board of directors thereof, have caused the same to be signed
12 by the president and secretary, this 1st day of Nov., 1869.

(Signed) W. H. ROBERTS,
President of the Board of Directors.
S. S. LOCKWOOD,
Secretary of the Board of Directors.

Countersigned:
F. EGGERT,
Treasurer School District.

Copy. EXHIBIT "B."

Coupon.

Treasurer of Independent School District, 825: Ackley, Hardin Co., Iowa, will pay the holder hereof, on the first day of Nov., 1874, at the Hardin Co. Bank, at Eldora, Ia., twenty-five dollars, for interest due on school-house bond No. 8.

(Signed) W. H. ROBERTS, *President.*
S. S. LOCKWOOD, *Secretary.*

(Endorsed:) In the circuit court of the United States in and for the district of Iowa. F. G. Hall *vs.* The Ind. Dist. of Ackley. 2662. Petition. Filed Nov. 22, 1878. E. R. Mason, clerk. Nourse, Kauffman & Co., att'ys for pl'ff.

13 And on the 22nd day of November, 1878, a præcipe for summons was filed in said cause, which said præcipe for summons is in the words and figures following, to wit:

14 To the clerk of the United States circuit court, district of Iowa:

Please issue process out of said court, pursuant to the directions below:

Plaintiff, F. G. Hall, citizen of New York.

Defendant, Independent School District of Ackley, Hardin Co., Iowa, citizen of Iowa.

Form of process, summons.

On what brought debt on eight bonds for $500.00 each; total am't, $4,000.00; amount of claim, $4,000.00, with 10 per cent. int.; amount of damages, $4,000.

Date of præcipe, Nov. 22nd, 1878.

When returnable, May term, 1879.

(Signed) NOURSE, KAUFFMAN & CO.,
Attorney for Plaintiff.

(Endorsed:) No. 2662. United States circuit court, district of Iowa. District of Iowa *vs.* ———. Præcipe for summons. Filed Nov. 22, 1878. E. R. Mason, clerk.

15 And on the 29th day of November, 1878, a summons was filed in said cause, which said summons, together with the marshal's return thereon, are in the words and figures following, to wit:

16 UNITED STATES OF AMERICA, *District of Iowa.*

To the Marshal of the district of Iowa:

In the name of the President of the United States you are hereby commanded to summon the Independent School District of Ackley, Hardin Co., Iowa, a citizen of the State of Iowa, to appear before the honorable circuit court of the United States in and for the district of Iowa, on the first day of the next term thereof, to be begun and holden at the city of Des Moines, on the second Monday of May next, it being the 12 day of May, A. D. 1879, then and there to answer unto F. G. Hall, a citizen of the State of New York, in a plea of debt on bonds, in the sum of four thousand dollars and interest, to the damage of said plaintiff in the sum of $4,000.00. Hereof fail not, and have you then and there this writ.

Witness the Honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, at the city of Des Moines,
17 this the 22 day of November, A. D. 1878, and of the Independence of the United States the 103 year.

[SEAL.] (Signed) E. R. MASON,
Clerk U. S. Circuit Court, District of Iowa.

(Endorsed:) No. 2662. Summons. Circuit court of the United States, District of Iowa. F. G. Hall *vs.* Ind. Dist. of Ackley, Iowa. Nourse, Kauffman & Co., attorneys for plaintiff. Residence, Des Moines, Iowa. Filed Nov. 29, 1878. E. R. Mason, clerk. This writ came into my hands for service on the 22 day of Nov. A. D. 1878, and I served the same on the within-named Independent

School District of Ackley, in Hardin County, Iowa, on the 26th day of November, 1878, by reading the same to S. Block, the secretary of said Independant School District, and by delivering a true copy to said S. Block, at Ackley, in the county of Hardin and State of Iowa. J. W. Chapman, U. S. marshal. By S. S. Ethridge, deputy. Marshal's fees: Mileage, 125 miles, $7.50; service on, $2.00; copy, $0.50; = $10.00.

18 And on the 16th day of May, 1879, in the record of the proceeding in said court, is the judgment entry in said cause, in the words and figures following, to wit:

19 United States Circuit Court, District of Iowa. May Term, 1879.

FRIDAY, *May* 16, 1879.

F. G. HALL
vs.
THE INDEPENDENT DISTRICT OF ACKLEY, HARDIN CO., IOWA. } No. 2662. Law.

This cause coming on this day for hearing, plaintiff appeared, by Nourse, Kauffman & Co., and the defendant came not, but made default, and it appearing that the defendant has been duly and legally served with the summons herein, and has wholly failed to appear, it is ordered that a default be, and the same is hereby, entered against said defendant.

The action being on written promises to pay money, it was ordered that the clerk assess the amount due thereon. Thereupon the clerk reported that there is due plaintiff from the defendant, the sum of six thousand five hundred and sixty and $\frac{46}{100}$ dollars.

It is therefore ordered and adjudged that the plaintiff do
20 have and recover of and from the defendant the said sum of six thousand five hundred and sixty & $\frac{46}{100}$ dollars, with interest at the rate of ten per cent. per annum and the costs of this suit, taxed at $——, and that execution issue therefor.

21 And on the 19th day of May, 1879, a motion and affidavit to set aside the judgment was filed in said cause, which said motion and affidavit are in the words and figures following, to wit:

22 In the Circuit Court of the United States for the District of Iowa.

F. G. HALL *vs.* THE INDEPENDENT DISTRICT OF ACKLEY.

STATE OF IOWA, } *ss:*
County of Polk, }

Galusha Parsons, of the district and county aforesaid, being duly sworn, says he is attorney for the defendant herein, and as such the firm of Parsons & Runnells were retained about three weeks before the commencement of this term of —; that on the 22d day of April, he left town on professional business, expecting to return before the

commencement of this court, and so expecting he did not confer with his partner, Mr. Runnell's, in respect to the cause; deponent further says he was constantly absent until yesterday,—. That he has fully examined this case, and believes that he has, from the examination of the facts and of the same matter heretofore in controversy in the State courts, as good and full knowledge thereof as any of the defendant, and that defendant has a good and substantial defense upon the merits herein; that said bonds were issued in excess of the constitutional limitation, and that the school-house for the erection of which the same were issued was of far less value than the amount of said bonds, and that the plaintiff received the same with full knowledge of all the facts aforesaid.

(S'g'd) GALUSHIE PARSONS.

Sworn before me, May 19, 1879.

E. R. MASON, *Clerk.*

Upon the foregoing affidavit and the merits herein the defendant moves to set aside the defaults, upon the grounds—

1. This court has no jurisdiction of the cause of action.
2. The defendant has a good defence upon the merits.

(Signed) PARSONS & RUNNELLS,
Def't Att'y.

(Endorsed:) No. 2662, law. United States circuit court, dis't of Iowa. F. G. Hall *vs.* Ind. School Dis't, Ackley. Mo. to set aside def'lt. Filed May 19, 1879. E. R. Mason, clerk.

And on the 12th day of June, 1879, in the record of the proceedings in said court, is an entry in said cause in the words and figures following, to wit:

United States Circuit Court, District of Iowa, May Term, 1879.

THURSDAY, *June* 12, 1879.

F. G. HALL
vs.
THE INDEPENDENT DISTRICT OF ACKLEY, HARDIN Co., IOWA. } No. 2662. Law.

This cause coming on this day for hearing on the defendant's motion to set aside the default and judgment entered herein on the 16th day of May, 1879, plaintiff appeared by Nourse, Kauffman & Co., and the defendant by Parsons & Runnells, and the court, after arguments of counsel thereon, being fully advised, sustained said motion; and it was ordered that said default and judgment be, and they are hereby, set aside, and defendant was given leave to answer instanter.

And on the 13th day of June, 1879, the defendant, by Parsons & Runnells, its attorneys, filed in said cause its answer to plaintiff's petition; which said answer is in the words and figures following, to wit:

28 *Answer.*

In the Circuit Court of the United States in and for the District of Iowa.

F. G. HALL
agt.
INDEPENDENT SCHOOL DISTRICT OF ACKLEY, HARDIN COUNTY, IOWA.

The defendant, answering plaintiff's petition, says:

I. It denies that he executed and delivered said alleged bonds or any of them as in said petition alleged, and it alleges that the same was signed by the president of the said board without being in any way authorized so to do, and without any election authorizing the issuing thereof, and that the said Foster Brothers, the payees therein named, at the time the same were received by them, well knew that the same had not been in any way authorized by the said district, and that the said president of said board had no authority
29 to issue the same.

II. For a second and further defence the defendant says said alleged bonds were issued by the president of its said board without being in any way authorized by the electors of said district so to do, for the pretended purpose of building a school house; that the sum agreed to be paid therefor largely exceeded the contemplated actual cash thereof, to wit, in the sum of at least six thousand dollars; that the amount for which said bonds were so issued was then well known by the said payees therein named so to exceed the contemplated as necessary cost of the school house for the erection of which the same were issued; that the aggregate amount of the bonds so issued was twelve thousand dollars, when in truth and in faith all of said parties well knew that the actual or contemplated cost of said school house would not exceed six thousand dol-
30 lars, and the said board then paid said Foster Brothers two thousand dollars as cash, and the defendant further say that the said Foster Brothers assigned said bonds to parties who received the same with full knowledge of all the facts herein stated, and that they were fraudulent and void; and the defendant further said that the plaintiff herein received said bonds with full knowledge that the same were without consideration, except as aforesaid, and that they were fraudulent and void.

III. For a third and further defense defendant says that the said president of defendant entered into an agreement with the said Foster Brothers for the erection of a school house at the agreed consideration of fourteen thousand dollars, without being in any way authorized by the vote of the electors of said district so to do.
31 And that said alleged bonds were thereupon issued by him in payment therefor with the full knowledge upon the part both of said president and of the said payees therein that the said bonds largely exceed both the real value of the erection of the said school house and the amount contemplated to be expended in the erection thereof; and the said bonds were issued and received with the intent so to defraud this defendant. And the defendant further

says the said amount of fifteen thousand dollars largely exceeds five per centum of the last assessed value of the propert- of said district prior to the issuance thereof. And defendant further says the plaintiff received the said bonds with notice of all the facts herein stated.

IV. For a fourth and further defense, the defendant says that on or about the 20th day of August, 1869, the board of directors, this defendant, entered into a certain contract in writing, a copy
32 of which is herewith produced, with a firm doing business under the name of Foster Brothers, for the erection of a school house for the agreed consideration of fourteen thousand dollars, two thousand dollars of which was paid in cash; that for the remaining sum of twelve thousand dollars the said president issued certain obligations or instruments purporting to — the bonds of said district for the purpose of securing to said Foster Brothers the payments of the said sum according to the terms of said contract; that the amount thereof largely exceeded five per centum of the last assessed value of the property of said district, and the amount in any way authorized by said district, which fact was well known to the said Foster Brothers; that said Foster Brothers, after receiving the said bonds, commenced work upon said school house, and thereafter did work and furnished materials of the value in all to about six thousand dollars, and no more.

33 That said school house was wholly incomplete and unfinished; that they then fraudulently and wrongfully abandoned the same, and refused to carry out said contract, to the damage of the defendant in the sum of six thousand dollars. That the work so done upon said building was done in an unskilful and unworkmanlike manner, and in no respect in accordance with the terms of said contract.

That the said Foster Brothers transferred said bonds with the fraudulent intent to defeat any defence thereto; but, as this defendant is informed, and verily believes to be true, to parties receiving the same with full notice of all the facts herein stated.

(Signed) PARSONS & RUNNELLS,
Att'ys for Def't.

34 UNITED STATES OF AMERICA, }
State and District of Iowa, Polk County, } *ss:*

I, G. A. Graves, being sworn, say that I am one of the directors of the defendant; that I have read the foregoing answer, and that the statements therein made are true, as I verily believe.

(Signed) G. A. GRAVES.

Subscribed and sworn to by G. A. Graves before me, this 6th day of June, 1879.

(Signed) E. R. MASON, *Clk.*

(Endorsed:) U. S. C. C. F. G. Hall *vs.* Ind. School District of Ackley. Answer. Filed Jun- 13, 1879. E. R. Mason, clerk. Parsons & Runnells, att'ys for def't.

35 And on the 5th day of November, 1879, a stipulation to waive a jury was filed in said cause; which said stipulation is in the words and figures following, to wit:

36 F. G. HALL
vs.
INDEPENDENT SCHOOL DISTRICT OF ACKLEY.

In the above cause it is stipulated that the cause be tried *to* the court, a jury being waived, and the cause is set down for hearing on the 26th day of Nov., 1879, without prejudice to a motion for continuance.

(Signed) PARSONS & RUNNELLS,
Def'ts' Att'ys.
NOURSE, KAUFFMAN & CO.,
For Plff.

(Endorsed:) No. 2662. Law. F. G. Hall *vs.* Independent School Dist. of Ackley. Stipulation. Filed Nov. 5, 1879. E. R. Mason, clerk.

37 And on the 10th day of May, 1880, a præcipe for appearance was filed in said cause; which said præcipe for appearance is in the words and figuares following, to wit:

38 *Præcipe for Appearance.*

In the United States Circuit Court, District of Iowa.

F. G. HALL, Complainant,
vs.
IND. DIST. ACKLEY, Defendant, } No. 2662. Rule Day.

The clerk of said court will please enter appearance for def't.
(Law action.)
Defendants in above cause.

(S'g'd) J. F. DUNCOMBE, *Defendant.*

(Endorsed:) U. S. circuit court, district of Iowa. No. —. Eq. Hall *vs.* Ind. Dist. Ackley. Præcipe for appearance. Filed May 10, 1880. E. R. Mason, clerk.

39 And on the 24th day of May, 1880, in the record of the proceedings in said court is an entry in said cause in the words and figures following, to wit:

40 United States Circuit Court, District of Iowa, May Term, 1880.

MONDAY, *May* 24, 1880.

F. G. HALL *vs.* INDEPENDENT DISTRICT OF ACKLEY.

This cause coming on this day for hearing, by consent of parties in open court, it is ordered that each party have leave to amend pleadings herein, and that this cause stand continued.

41 And on the 23rd day of September, 1880, a trial notice was filed in said cause; which said notice is in the words and figures following, to wit:

42 *Trial Notice.*

In the Circuit Court of the United States in and for the District of Iowa.

F. G. HALL
vs.
THE INDEPENDENT SCHOOL DISTRICT OF ACKLEY. } No. 2662. Law.

To the clerk of said court:

Notice is hereby given that the above-entitled cause will be ready for trial on issues of law and fact at the next term of this court, to be held commencing on the third Tuesday of October, 1880.

NOURSE, KAUFFMAN & JACKSON,
Att'ys for Pl'ff.

(Endorsed:) In circuit court U. S., dis't of Iowa. No. 2662. Law. F. G. Hall *vs.* Ind. School Dis't of Ackley. Trial notice. Filed Sep. 23, 1880. E. R. Mason, clerk. N., K. & J., for pl'ffs.

43 And on the 28th day of October, 1880, in the record of the proceedings in said court is an entry in said cause in the words and figures following, to wit:

44 United States Circuit Court, District of Iowa. October Term, 1880.

THURSDAY, *October 28th*, 1880.

F. G. HALL
vs.
INDEPENDENT DISTRICT OF ACKLEY. } No. 2662. Law.

This cause coming on this day for hearing, the defendant was given leave to file an amended answer.

45 And on the 4th day of November, 1880, an amended answer was filed in said cause; which said amended answer is in the words and figures following, to wit:

46 In the Circuit Court of the United States, District of Iowa.

FRANCIS G. HALL
ag't
THE INDEPENDENT SCHOOL DISTRICT OF ACKLEY, HARDIN COUNTY, IOWA.

Now comes the defendant, and by leave of the court amends its answer, as follows:

I. That heretofore one Mosher brought an action in this court against this defendant upon the coupons attached to said bonds,

and the same was afterwards tried and determined upon the merits thereof, and judgment thereupon rendered declared said bonds and coupons fraudulent and void; that the said Betsey M. Hall was one of the real parties in interest in said action; that she then held the bonds upon which this action is brought, and the present plaintiff now holds the same by nominal transfer and for her
47 benefit, and that the said Betsey M. Hall is the real party in interest in this action. Defendant makes the pleading, judgment, and proceedings in said action, now among the records of this court, a part hereof.

II. The defendant further says that heretofore, to wit, at the time and in the court named in the transcript of judgment hereunto annexed, and marked Exhibit "A," and made a part hereof, the parties in said transcript litigated and tried the questions of the validity of said bonds, and the plaintiff in this action, as the real party in interest in the said action, then recovered judgment in said court against the said Mosher, which judgment was thereupon fully satisfied and discharged.

III. For a further defence he says, that heretofore, to wit, in 1875, one Han-ah Mosher brought an action in the district court
48 of the State of Iowa, in which the said John Mosher was a party, and who then held, or represented the parties then holding, the bonds upon which this action is brought; and it was then and there adjudicated and determined by the said court that the said bonds were null and void, and of no effect against the said defendant, a copy of which record is herewith produced, marked "Ex. B," and made a part hereof.

(Signed) PARSONS & RUNNELLS,
Def'ts Att'ys.

STATE OF IOWA, }
County of Polk, } *ss:*

Being duly sworn, says he is president of the defendant; that the statements contained in the foregoing answer are true, as he verily believes.

Sworn before me, Oct. 28, 1880. ——— ———.

(Endorsed:) No. 2662. Hall *v.* Ackley. Am'd't to answer. P. & R. Filed Nov. 4, 1880. E. R. Mason, clerk.

49 And on the 4th day of November, 1880, a reply was filed in said cause; which said reply is in the words and figures following, to wit:

50 *Reply.*

In U. S. Circuit Court, Dist. of Iowa.

F. G. HALL *vs.* THE INDEPENDENT SCHOOL DISTRICT OF ACKLEY.

The pl'ff, for reply to the answer heretofore filed herein and to the amendment filed, and to the various counts of each of said plead-

ings, denies each and every allegation contained therein as fully as if specifically desired herein.

2. And for further reply, shows and avers that one John Mosher purchased all of said bonds in good faith and for value before due, and without notice of any defects or defence thereto, and without notice of any of the maters set up in said answer and amendment to answer, and that said Mosher thereafter sold said bonds to one Betsey P. Hall, who purchased the same for value before due and in good faith in the ordinary course of business,
51 and without notice of any of the matters set out in said answer or amendment thereto, and that thereafter pl'ff purchased said bonds from said Betsey P. Hall before their maturity, and is now the owner and holder thereof for value and in good faith.

(S'g'd) NOURSE, KAUFFMAN & JACKSON,
Att'ys for Pl'ff.

(Endorsed:) F. G. Hall *vs.* The Independent School Dist. of Ackley. Reply. Filed Nov. 4, 1880. E. R. Mason, clerk.

52 And on the 5th day of November, 1880, in the record of the proceedings in said court is an entry in said cause in the words and figures following, to wit:

53 United States Circuit Court, District of Iowa. October Term, 1880.

FRIDAY, *November 5th*, 1880.

F. G. HALL
vs.
INDEPENDENT DISTRICT OF ACKLEY. } No. 2662. Law.

This cause coming on this day for hearing, the plaintiff appeared by Nourse & Kauffman, and the defendant by Parsons & Runnells and John F. Duncombe, and by stipulation of parties in writing a jury was waived, and the case was submitted to the court, and the court having heard a statement of the case and a portion of the evidence, continued the trial until to-morrow morning at ten o'clock.

54 And on the 6th day of November, 1880, in the record of the proceedings in said court is a judgment entry in said cause, which is in the words and figures following, to wit:

55 United States Circuit Court, District of Iowa October Term, 1880.

SATURDAY, *November 6th*, 1880.

F. G. HALL
vs.
INDEPENDENT DISTRICT OF ACKLEY. } No. 2662. Law.

This cause coming on this day to — further heard, parties appear by their counsel; and the court having heard the conclusion of the

evidence, arguments of counsel, and being now fully advised in the matter, finds for the plaintiff; and the action being upon written promises to pay money, it is ordered that the clerk assess the amount due thereon. Thereupon the clerk reported that there is due from the defendant to the plaintiff on the bonds and coupons sued on herein the sum of seven thousand three hundred sixty-two and $\frac{84}{100}$ dollars ($7,362\frac{84}{100}$), with interest thereon at the rate of ten per cent. per annum until paid, together with the costs of this
56 proceeding, taxed at $——, and that execution issue therefor; to all of which findings and judgment the defendant at the time excepted.

57 And on the 16th day of April, 1881, a trial notice was filed in said cause; which said notice is in the words and figures following, to wit:

58 *Notice of Trial.*

U. S. Circuit Court, District of Iowa.

F. G. HALL
v.
IND. SCHOOL DIST. OF ACKLEY.

To E. R. MASON, *Clerk of said Court:*

You are hereby notified that the above cause will be ready for trial on the part of the defendant at the May term of said court, which will begin on the 10th day of May, 1881.

(Signed) PARSONS & RUNNELLS,
Att'ys for Def't.

(Endorsed:) U. S. circuit court, dist. of Iowa. No. 2662. Law. F. G. Hall *vs.* Ind. School Dist. of Ackley. Notice to clerk. Filed Apr. 16, 1881. E. R. Mason, clerk. Parsons & Runnells, att'ys for def't.

59 And on the 1st day of June, 1881, in the record of the proceedings in said court, is an entry in said cause in the words and figures following, to wit:

60 United States Circuit Court, District of Iowa. May Term, 1881.

WEDNESDAY, *June* 1, 1881.

F. G. HALL
vs.
IND. SCHOOL DISTRICT OF ACKLEY, HARDIN COUNTY. } No. 2662. Law.

This cause came on this day for hearing upon defendant's petition for a writ of error to the Supreme Court of the United States. Plaintiff appeared by Nourse and Kauffman, and defendant by Parsons and Runnells, and the court being now fully advised, granted said petition, and said writ of error is allowed upon defendants filing a bond in the penal sum of one thousand dollars, conditioned as the

law directs, said bond to be approved by one of the judges of this court.

61 And on the 7th day of October, 1881, a writ of error bond was filed in said cause; which said bond is in the words and figures following, to wit:

62 Supreme Court of the United States.

F. G. HALL
vs.
THE INDEPENDENT SCHOOL DISTRICT OF ACKLEY, in the County of Hardin, Iowa.

Know all men by these presents, that we, John A. Carton, John Rath, Julius Martin, and E. J. Higgins, are held and firmly bound unto F. G. Hall, of New York State, in the sum of one thousand dollars, to be paid to the said F. G. Hall, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of us, jointly and severally, and our and each of our heirs, executors, and administrators, firmly by these presents. Dated this 16th day of July, 1881.

Whereas the above-named Independent School District of Ackley hath prosecuted a writ of error in the Supreme Court of the United States to reverse the judgment rendered in the above-entitled
63 action by the circuit court of the United States in and for the district of Iowa, central division:

Now, therefore, the condition of this obligation is such that if the above-named Independant School District of Ackley shall prosecute his said writ of error to effect, and answer all costs if he shall fail to make good his plea, then this obligation shall be void; otherwise to remain in full force and virtue.

(Signed) JNO. A. CARTON.
" JOHN RATH.
" JULIUS MARTIN.
" E. J. HIGGINS.

Sealed and delivered in presence of—
[SEAL.] S. BLOCH, *Notary Public.*

UNITED STATES OF AMERICA, } ss:
District of Iowa, }

John A. Carton, John Rath, Julius Martin, and E. J. Higgins, being duly sworn, depose and say, and each for himself saith, that he is worth the sum of two thousand dollars over and above all of his just debts and liabilities.

(Signed) JNO. A. CARTON.
" JOHN RATH.
64 " JULIUS MARTIN.
" E. J. HIGGINS.

Sworn to before me, this 27 day of July, 1881.
[SEAL.] (Signed) S. BLOCH,
Notary Public.

I approve the above bond and the sufficiency of the sureties thereto.

(Signed) J. M. LOVE, *Judge.*

(Endorsed:) Filed Oct. 7, 1881. E. R. Mason, clerk.

65 And on the 7th day of October, 1881, a writ of error was filed in said clerk's office in said cause; which said writ of error is in the words and figures following, to wit:

66 UNITED STATES OF AMERICA, *ss:*

The President of the United States of America to the honorable judges of the circuit court of the United States for the district of Iowa, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said circuit court, before you, between F. G. Hall, plaintiff, and the Independent School District of Ackley, in the county of Hardin, State of Iowa, defendant, a manifest error hath happened, to the great damage of the said defendant, The Independent School District of Ackley, as by the complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning
67 the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceeding aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and custom of the United States should be done.

Witness the Honorable Morrison *B.* Waite, Chief Justice of the Supreme Court of the United States, the 4 day of October, A. D. 1881.

(Signed) E. R. MASON,
Clerk U. S. C. C., Dist. of Iowa.

Allowed. J. M. LOVE, *Judge.*

(Endorsed:) Filed Oct. 7, 1881. E. R. Mason, clerk.

68 And on the 7th day of October, 1881, a citation was filed in said cause, the original of which is hereto attached, in the words and figures following, to wit:

69 UNITED STATES OF AMERICA, *ss:*

The President of the United States to F. G. Hall:

You are hereby cited and admonished to be and appear at a Supreme Court of the United States, to be holden at Washington, on the second Monday of October, 1881, pursuant to a writ of error filed

in the clerk's office of the United States circuit court for the district of Iowa, wherein The Independent School District of Ackley, in the county of Hardin, Iowa, is plaintiff in error, to show cause, if any there be, why the judgment rendered against said plaintiff in error, as in the said writ of error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Morrison *B.* Waite, Chief Justice of the Supreme Court of the United States, this 4 day of October, 1881.

J. M. LOVE, *Judge.*

Service of above accepted, this 7th of Oct., 1881.

NOURSE & KAUFFMAN,
Att'ys for Hall.

[Endorsed:] Filed Oct. 7, 1881. E. R. Mason, clerk.

70 United States Circuit Court, Central Division, District of Iowa.

I, E. R. Mason, clerk of said court, do hereby certify that the foregoing transcript contains full, true, and complete copies of all the pleadings, proceedings, and record entries in a certain cause in said court, wherein F. G. Hall was plaintiff and The Independent School District of Ackley, Hardin Co., Iowa, was defendant, as full, true, and complete as the originals of the same now remain on file and of record in my office.

I further certify that the original citation, with the return of service endorsed thereon, is hereto attached and herewith returned.

In testimony whereof, I hereunto subscribe my name and affix the seal of said court, at my office in Des Moines, in said district, this 8th day of October, A. D. 1881.

[SEAL.]

E. R. MASON,
Clerk U. S. Cir. Court, Cent. Div., Dist. of Iowa.

Endorsed on cover: Iowa C. C. U. S. No. 119. The Independent School District of Ackley, Hardin County, Iowa, plaintiff in error, *vs.* F. G. Hall. Filed 17th October, 1881.